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# Federal Register

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Tuesday, August 16, 2005
9:00 a.m.–Noon

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 983

**[Docket No. FV05–983–1 FR]**

## Pistachios Grown in California; Establishment of Reporting Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes reporting requirements authorized under the California pistachio marketing order (order). The order regulates the handling of pistachios grown in California and is administered locally by the Administrative Committee for Pistachios (committee). These additional reporting requirements will enable the committee to collect information on: Pistachios failing to meet quality and aflatoxin requirements; failing pistachios that are reworked or disposed of in accordance with applicable requirements; handlers applying for exemptions; transfers of uninspected pistachios between regulated handlers; and inventories and shipments of pistachios.

**EFFECTIVE DATE:** July 13, 2005.

**FOR FURTHER INFORMATION CONTACT:** Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 983 (7 CFR part 983), regulating the handling of pistachios grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule establishes reporting requirements authorized under the California pistachio order. The additional reporting requirements will enable the committee to collect information on: (1) Pistachios failing to meet quality and aflatoxin requirements; (2) failing pistachios that are reworked or disposed under the marketing order; (3) handlers applying for exemptions; (4) transfers of uninspected pistachios between regulated handlers; and (5) inventories and shipments of pistachios.

Sections 983.38, 983.39, and 983.40 of the pistachio order specify maximum aflatoxin requirements, minimum quality requirements, and failed lot rework and disposition procedures, respectively.

Sections 983.41 of the pistachio order provides exemptions for certain aflatoxin and quality testing requirements for handlers who handle less than 1,000,000 pounds of assessed weight pistachios per marketing year (September 1–August 31).

Section 983.47 of the pistachio order provides authority to require handlers to furnish such reports and information on such forms as are needed to enable USDA and the committee to perform their functions and enforce order provisions.

Section 983.70 of the pistachio order exempts handlers who handle 1,000 pounds or less of dried weight pistachios (dried to 5 percent moisture) from all aflatoxin and minimum quality requirements.

Under these authorities, the committee, at its November 3, 2004, meeting unanimously recommended establishing a new subpart ''Rules and Regulations,'' and a new section entitled ''§ 983.147—Reports'' to delineate and define six new forms, ACP–2 through ACP–7. The committee further clarified this recommendation at its December 15, 2004, meeting.

Detailed information on the burdens created by these new forms is discussed later in this document.

The recommended forms, ACP–2 through ACP–7, will be used by the committee to track pistachios that fail to meet minimum quality and maximum aflatoxin requirements (ACP–2); track lots which have been reworked or disposed of in accordance with marketing order requirements (ACP–3); identify handlers who handle 1,000 dried pounds or less of pistachios per production year (September 1–August 31) (ACP–4) and properly apply marketing order exemptions; identify handlers who handle less than 1,000,000 pounds of assessed weight pistachios per marketing year (September 1–August 31) (ACP–5) and properly apply marketing order exemptions; track uninspected

pistachios that are transferred between regulated handlers (ACP–6); and track monthly shipments and handler inventories (ACP–7).

The majority of the forms recommended by the committee (ACP–2 through APC–6) are new reporting requirements, and do not duplicate information collected by any other Federal agency. One form, ACP–7 is similar to a report required by the California Pistachio Commission (commission), a program overseen by the State of California, under which California pistachio research and promotion activities are implemented. Because the commission is prohibited from sharing confidential handler information, the committee recommended the ACP–7 be implemented for committee use to provide information necessary to administer the order. Because shipment and inventory data is already compiled by handlers for the commission, handlers may attach the commission report to the committee form to meet this new reporting requirement. Thus, handlers will not be duplicating their efforts and both agencies would receive necessary data for respective program purposes. Further, the information collection does not duplicate that collected by any other Federal agency.

The committee estimates that this action will impact no more than 24 handlers of pistachios, and further estimates that, on average, a handler will expend no more than an average of 11.8 minutes in completing each form. The total estimated annual burden for all six forms is estimated to be 92.4 hours.

The committee believes that these forms are easy to prepare and file, and place as small a reporting burden as possible on handlers. These forms and their respective burdens were discussed at public meetings at which all affected entities were encouraged to comment on the effect of requiring these forms to be completed and filed by pistachio handlers. The committee vote was unanimous, with 8 in favor and none opposed or abstaining.

**Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses would not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 24 handlers of California pistachios subject to regulation under the order and approximately 741 producers in the production area. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,000,000. Seven of the 24 handlers subject to regulation have annual pistachio receipts of at least $6,000,000. In addition, 722 producers have annual receipts less than $750,000. Thus, the majority of handlers and producers of California pistachios may be classified as small entities. There are an estimated nine USDA approved testing laboratories that may participate in this program. Five of these laboratories are handler in-house operations and already included in the estimated respondents. Other testing laboratories are government agencies. There are two other existing laboratories. One is part of the Dried Fruit Association of California and the other is a private laboratory operated by Am Cal Analytical Laboratories. We believe that this association and private laboratory would be considered small entities.

This final rule establishes reporting requirements authorized under the California pistachio order. These additional reporting requirements will enable the committee to collect information on: (1) Pistachios failing to meet quality and aflatoxin requirements; (2) failing pistachios that are reworked or disposed of in marketing order requirements; (3) handlers applying for exemptions; (4) transfers of uninspected pistachios between regulated handlers; and (5) inventories and shipments of pistachios.

Sections 983.38, 983.39, and 983.40 of the pistachio order provide maximum aflatoxin requirements, and minimum quality requirements, and failed lot rework and disposition procedures, respectively.

Sections 983.41 of the pistachio order provides exemptions for certain aflatoxin and quality testing requirements for handlers who handle less than 1,000,000 pounds of assessed weight pistachios per marketing year (September 1–August 31).

Section 983.47 of the pistachio order provides authority for the committee to require handlers to furnish such reports and information on such forms as are needed to enable the Secretary of Agriculture and the committee to perform their functions and enforce order provisions.

Section 983.70 of the pistachio order exempts handlers who handle 1,000 pounds or less of dried weight pistachios during any marketing year (dried to 5 percent moisture) from all aflatoxin and minimum quality requirements.

Under these authorities, the committee, at its November 3, 2004, meeting, unanimously recommended establishing a new subpart ''Rules and Regulations,'' and a new section entitled ''§ 983.147—Reports'' to delineate and define six new forms, ACP–2 through ACP–7. The committee further clarified this recommendation at its December 15, 2004, meeting.

The majority of the reports recommended by the committee are new reporting requirements (ACP–2 through ACP–6). One form, ACP–7 is similar to a report required by the commission, a program overseen by the State of California, under which California pistachio research and promotion activities are implemented.

The committee debated the overall merits of the forms at its meetings, deliberating over the value of the information to be collected relative to the burden which each form would impose on the regulated handlers. In the end, the committee concluded that the information that will be collected is necessary to properly administer the marketing order. It further concluded that the burden was relatively small compared to the benefits that will be accrued by the committee and industry from the information obtained.

The committee discussed alternatives to establishing these reporting requirements including not adopting ACP–4, as it was believed that this information might be obtained by staff during compliance audits. Upon reviewing the auditing procedure, committee members determined that utilization of the ACP–4 will be a more feasible means of obtaining information on identifying exempt handlers. Thus, the committee unanimously recommended all six forms for implementation. It believes that the information to be provided on each of the recommended forms will be important to the administration of the order and will enhance committee operations.

Further, the committee's meetings were widely publicized throughout the pistachio industry and all interested persons were encouraged to attend the

meetings and participate in the committee's deliberations. Like all committee meetings, the November 3 and December 15, 2004, meetings were public meetings and entities of all sizes were invited to express their views on these issues.

A proposed rule concerning this action was published in the **Federal Register** on March 28, 2005 (70 FR 15602). The proposal also announced AMS's intent to request an approval of a new information collection for the marketing order regulating pistachios grown in California. Copies of the proposal were also mailed or sent via facsimile to all pistachio handlers. Finally, the proposed rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending May 27, 2005, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the committee is required to furnish handlers with one of the forms by July 15. Further, handlers are aware of this rule, which was unanimously recommended at a public meeting. Also, a 60-day comment period was provided for in the proposed rule, and no comments were received.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule. A detailed discussion of the six new forms follows.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule were approved by the Office of Management and Budget (OMB), under OMB No. 0581–0230. The information collection has been merged into OMB No. 0581–0215 Pistachios Grown in California, which expires May 31, 2008.

Since publication of the proposed rule on March 28, 2005 (70 FR 15602), the committee has found that the number of respondents (handlers and approved aflatoxin laboratories) has increased from 20 to 25. However, 5 of these 25 respondents will be exempt from filing 5 of the 6 forms, as they handle 1,000 pounds or less and are exempt from handling requirements and most reporting requirements.

In summary, this final rule establishes reporting requirements authorized under the California pistachio order. These additional reporting requirements will enable the committee to collect information on: (1) Pistachios failing to meet quality and aflatoxin requirements; (2) failing pistachios that are reworked or disposed of in accordance with marketing order requirements; (3) handlers applying for exemptions; (4) transfers of uninspected pistachios between regulated handlers; and (5) inventories and shipments of pistachios. Additionally, it will allow the committee to obtain accurate information for preparation of the annual marketing policy statement, as required under the order.

Another form, ACP 1, was not included with this approval request because that form was part of a previous request, published in the **Federal Register** on March 1, 2005 (70 FR 9843).

**List of Subjects in 7 CFR Part 983**

Pistachios, Marketing agreements and orders, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 983 is amended as follows:

## PART 983—PISTACHIOS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 983 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. In part 983, a new Subpart—Rules and Regulations and § 983.147—Reports are added to read as follows:

### Subpart—Rules and Regulations

**§ 983.147 Reports.**

(a) *ACP–2, Failed Lot Notification.* Each handler shall notify the Administrative Committee for Pistachios (committee) of all lots which fail to meet the order's minimum quality requirements by completing sections A and B of this form. Handlers shall furnish this report to the committee no later than 10 days after test completion. Each USDA approved aflatoxin testing laboratory shall complete section C of this report and forward this report and the failing aflatoxin test results to the committee and to the handler within 10 days of the test failure.

(b) *ACP–3, Failed Lot Disposition and Rework Report.* Each handler who reworks a failing lot of pistachios shall complete this report and shall forward it to the committee no later than 10 days after the rework is completed. If rework is not selected as a remedy, the handler shall submit the form to the committee office within 10 days of disposition of the lot.

(c) *ACP–4, Federal Marketing Order Exempt Handler Notification.* Each handler who handles 1,000 pounds or less of dried weight pistachios in a production year shall complete and furnish this report to the committee no later than November 15 of each production year.

(d) *ACP–5, Minimal Testing Form.* Each handler who handles less than 1,000,000 pounds of dried weight pistachios in a production year and who wishes to request an exemption under the minimal quantities provisions (Section 983.41) of the order shall furnish this report to the committee office no later than August 1 of each production year.

(e) *ACP–6, Inter-handler Transfer.* Each handler who transfers uninspected pistachios to another handler within the production area shall complete the ACP–6 and sign Part A. The transferring handler shall forward the original ACP–6 and one copy to the handler who receives the uninspected pistachios. The transferring handler shall furnish one copy of ACP–6 to the committee within 30 days of the transfer. The handler receiving the uninspected pistachios (receiving handler) shall sign Part B of the original ACP–6 and shall file it with the committee within 30 days of the transfer.

(f) *ACP–7 Monthly Report of Inventory/Shipments.* Each handler of pistachios shall file this report with the committee by the 10th day of each month for the previous month's inventory and shipment information.

(g) *Exemptions.* Handlers, who handle 1,000 pounds or less of dried pistachios during any marketing year, are exempt from filing all forms with the exception of the ACP–4.

(h) *Records.* Each handler shall maintain all records of pistachios received, held, shipped, and disposed of for at least 3 years following each crop

year to show compliance with the marketing order provisions.

Dated: July 8, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–13755 Filed 7–11–05; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. NM311; Special Conditions No. 25–291–SC]**

## Special Conditions: Raytheon Model BH.125 Series 400A, DH.125 Series 400A, and HS.125 Series 400B Airplanes; High-Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Raytheon Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes modified by Envoy Aerospace. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates digital air data computers and displays that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is July 1, 2005. Comments must be received on or before August 11, 2005.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM311, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM311.

**FOR FURTHER INFORMATION CONTACT:** Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected airplanes. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, we invite interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

### Background

On March 28, 2005, Envoy Aerospace, 5027 Switch Grass Lane, Naperville, Illinois 60564–5368, applied for a supplemental type certificate (STC) to modify Raytheon Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes. Raytheon Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes are currently approved under Type Certificate No. A3EU. The Raytheon Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes are transport category airplanes powered by two turbofan engines, with maximum takeoff weights of up to 23,600 pounds. These airplanes operate with a 2-pilot crew and can seat up to 8 passengers. The proposed modification includes the incorporation of dual Innovative Solutions and Support Air Data Systems. The avionics installed in these airplanes have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

### Type Certification Basis

Under the provisions of 14 CFR 21.101, Envoy Aerospace must show that the Raytheon Aircraft Company Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3EU or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The certification basis for the Raytheon Aircraft Company Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes includes CAR.4b dated December 1953, Amendment 4b–1 through 4b–11, exclusive of CAR 4b.350(e), and includes Special Regulation SR.422B. In addition, the certification basis includes later amended sections of 14 CFR part 25 that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Raytheon Aircraft Company Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Raytheon Aircraft Company Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Envoy Aerospace apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A3EU to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

**Novel or Unusual Design Features**

As noted earlier, the Raytheon Aircraft Company Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes modified by Envoy Aerospace will incorporate dual Innovative Solutions and Support Air Data Systems that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

**Discussion**

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Raytheon Aircraft Company Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes modified by Envoy Aerospace. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

**High-Intensity Radiated Fields (HIRF)**

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

| Frequency | Field strength (volts per meter) | |
|---|---|---|
| | Peak | Average |
| 10 kHz–100 kHz ..... | 50 | 50 |
| 100 kHz–500 kHz ..... | 50 | 50 |
| 500 kHz–2 MHz ..... | 50 | 50 |
| 2 MHz–30 MHz ..... | 100 | 100 |
| 30 MHz–70 MHz ..... | 50 | 50 |
| 70 MHz–100 MHz ..... | 50 | 50 |
| 100 MHz–200 MHz ... | 100 | 100 |
| 200 MHz–400 MHz ... | 100 | 100 |
| 400 MHz–700 MHz ... | 700 | 50 |
| 700 MHz–1 GHz ..... | 700 | 100 |
| 1 GHz–2 GHz ..... | 2000 | 200 |
| 2 GHz–4 GHz ..... | 3000 | 200 |
| 4 GHz–6 GHz ..... | 3000 | 200 |
| 6 GHz–8 GHz ..... | 1000 | 200 |
| 8 GHz–12 GHz ..... | 3000 | 300 |
| 12 GHz–18 GHz ..... | 2000 | 200 |
| 18 GHz–40 GHz ..... | 600 | 200 |

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

**Applicability**

As discussed above, these special conditions are applicable to Raytheon Aircraft Company Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes modified by Envoy Aerospace. Should Envoy Aerospace apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A3EU, to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

**Conclusion**

This action affects only certain novel or unusual design features on Raytheon Aircraft Company Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes modified by Envoy Aerospace. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Raytheon Aircraft Company Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes modified by Envoy Aerospace.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is

exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 1, 2005.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–13662 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. NM312; Special Conditions No. 25–292–SC]**

## Special Conditions: Dassault Model Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F Airplanes; Model Mystere-Falcon 200 Airplanes; and Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 Airplanes; High-Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Dassault Model Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F airplanes; Model Mystere-Falcon 200 airplanes; and Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by Royal Air, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification is the installation of new air data display units (ADDU) and a new air data sensor, which perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is July 1, 2005. Comments must be received on or before August 11, 2005.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM312 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM312.

**FOR FURTHER INFORMATION CONTACT:** Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, we invite interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

### Background

On January 28, 2005, Royal Air, Inc., 2141 Airport Road, Waterford, Michigan 48327, applied for a supplemental type certificate (STC) to modify Dassault Model Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F airplanes; Model Mystere-Falcon 200 airplanes; and Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes currently approved under Type Certificate No. A7EU. The Dassault Aviation Falcon series airplanes are small transport category airplanes powered by two turbojet engines, with maximum takeoff weights of up to 18,000 pounds. These airplanes operate with a 2-pilot crew and can seat up to 8 passengers. The proposed modification is the installation of ADDUs and an air data sensor manufactured by Innovative Solutions & Support. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

### Type Certification Basis

Under the provisions of 14 CFR 21.101, Royal Air, Inc. must show that the Dassault Model Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F airplanes; Model Mystere-Falcon 200 airplanes; and Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A7EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The certification basis for the Dassault Model Fan Jet Falcon and Fan Jet Falcon Series C, D, E, and F airplanes includes the applicable paragraphs of CAR 4b, as amended by Amendments 4b–1 through 4b–12, Special Regulation SR–422B, and 14 CFR part 25 as amended by provisions of Amendment 25–4 in lieu of CAR 4b.350(e) and (f). The certification basis for the Dassault Model Mystere-Falcon 200 airplanes includes the applicable paragraphs of CAR 4b, as amended by Amendments 4b–1 through 4b–12; Special Regulation SR–422B and 14 CFR part 25 as amended by certain sections of Amendments 25–1 through 25–46;

SFAR 27 as amended by Amendments 27–1 through 27–3; and 14 CFR part 36 as amended by Amendments 36–1 through 36–12. The certification basis for the Dassault Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes includes the applicable paragraphs of CAR 4b, as amended by Amendments 4b–1 through 4b–12, Special Regulation SR–422B, and 14 CFR part 25 as amended by certain sections in Amendments 25–1 through 25–56; § 25.904 and Appendix 1 as amended by Amendment 25–62; SFAR 27 as amended by Amendments 27–1 through 27–6; and 14 CFR part 36 as amended by Amendments 36–1 through 36–15. In addition, the certification basis includes certain later amended sections of the applicable part 25 regulations that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Dassault Model Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F airplanes; Model Mystere-Falcon 200 airplanes; and Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Dassault Model Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F airplanes; Model Mystere-Falcon 200 airplanes; and Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Royal Air, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A7EU to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

**Novel or Unusual Design Features**

As noted earlier, the Dassault Model Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F airplanes; Model Mystere-Falcon 200 airplanes; and Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by Royal Air, Inc. will incorporate ADDUs and an air data sensor manufactured by Innovative Solutions & Support. The ADDUs and air data sensor perform critical functions. These systems may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

**Discussion**

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Dassault Model Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F airplanes; Model Mystere-Falcon 200 airplanes; and Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by Royal Air, Inc. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

**High-Intensity Radiated Fields (HIRF)**

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

| Frequency | Field strength (volts per meter) | |
|---|---|---|
| | Peak | Average |
| 10 kHz–100 kHz | 50 | 50 |
| 100 kHz–500 kHz | 50 | 50 |
| 500 kHz–2 MHz | 50 | 50 |
| 2 MHz–30 MHz | 100 | 100 |
| 30 MHz–70 MHz | 50 | 50 |
| 70 MHz–100 MHz | 50 | 50 |
| 100 MHz–200 MHz | 100 | 100 |
| 200 MHz–400 MHz | 100 | 100 |
| 400 MHz–700 MHz | 700 | 50 |
| 700 MHz–1 GHz | 700 | 100 |
| 1 GHz–2 GHz | 2000 | 200 |
| 2 GHz–4 GHz | 3000 | 200 |
| 4 GHz–6 GHz | 3000 | 200 |
| 6 GHz–8 GHz | 1000 | 200 |
| 8 GHz–12 GHz | 3000 | 300 |
| 12 GHz–18 GHz | 2000 | 200 |
| 18 GHz–40 GHz | 600 | 200 |

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

**Applicability**

As discussed above, these special conditions are applicable to Dassault Model Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F airplanes; Model Mystere-Falcon 200 airplanes; and Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by Royal Air, Inc. Should Royal Air, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A7EU to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

**Conclusion**

This action affects only certain novel or unusual design features on Dassault

Model Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F airplanes; Model Mystere-Falcon 200 airplanes; and Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by Royal Air, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Dassault Model Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F airplanes; Model Mystere-Falcon 200 airplanes; and Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by Royal Air, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).*

Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

*Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 1, 2005.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–13658 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2005–20725; Directorate Identifier 2003–NM–250–AD; Amendment 39–14183; AD 2005–14–06]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 707–300B, –300C, and –400 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 707–300B, –300C, and –400 series airplanes. This AD requires repetitive inspections to detect cracked or broken hinge fitting assemblies of the inboard leading edge slats, and corrective action if necessary. This AD also provides as an option a preventive modification, which defers the repetitive inspections. In addition, this AD provides an option of replacing all hinge fitting assemblies with new, improved parts, which terminates the repetitive inspection requirements. This AD is prompted by results of a review to identify and implement procedures to ensure the continued structural airworthiness of aging transport category airplanes. We are issuing this AD to detect and correct fatigue cracking of the hinge fitting assembly of the inboard leading edge slats, which could result in reduced structural integrity of the slat system. This condition could result in loss of the inboard leading edge slat and could cause the flightcrew to lose control of the airplane.

**DATES:** This AD becomes effective August 16, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of August 16, 2005.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

*Docket:* The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–20725; the directorate identifier for this docket is 2003–NM–250–AD.

**FOR FURTHER INFORMATION CONTACT:** Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, FAA Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with an AD for all Boeing Model 707–300B, –300C, and –400 series airplanes. That action, published in the **Federal Register** on March 30, 2005 (70 FR 16177), proposed to require repetitive inspections to detect cracked or broken hinge fitting assemblies of the inboard leading edge slats, and corrective action if necessary. That action also proposed an optional preventive modification, which defers the repetitive inspections. In addition, that action proposed an option of replacing all hinge fitting assemblies with new, improved parts, which terminates the repetitive inspection requirements.

**Comments**

We provided the public the opportunity to participate in the development of this AD. We have considered the comment that has been submitted on the proposed AD. The commenter supports the proposed AD.

**Explanation of Change to Referenced Service Bulletin**

We have corrected the title of the service bulletin referred to in this AD to ''Boeing 707/720 Service Bulletin 2982.''

**Clarification of Optional Preventative Modification**

We have revised the text of paragraph (i) of the AD to clarify that the optional preventative modification ''defers the repetitive inspections required by paragraph (g) of this AD.''

**Conclusion**

We have carefully reviewed the available data, including the comment that has been submitted, and determined that air safety and the

public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

**Costs of Compliance**

This AD affects about 189 Boeing Model 707–300B, –300C, and –400 series airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes |
|---|---|---|---|---|---|
| Dye Penetrant Inspection | 3 | $65 | (1) | $195 (per inspection cycle) | 16 |
| Preventive Modification (Optional) | 10 | 65 | (1) | 650 (per inspection) | 16 |
| Terminating Action (Optional) | 10 | 65 | $8,220 | 8,870 | 16 |

[1] None.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**2005–14–06 Boeing:** Amendment 39–14183. Docket No. FAA–2005–20725; Directorate Identifier 2003–NM–250–AD.

**Effective Date**

(a) This AD becomes effective August 16, 2005.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all Boeing Model 707–300B, –300C, and –400 series airplanes, certificated in any category.

**Unsafe Condition**

(d) This AD was prompted by results of a review to identify and implement procedures to ensure the continued structural airworthiness of aging transport category airplanes. We are issuing this AD to detect and correct fatigue cracking of the hinge fitting assembly of the inboard leading edge slats, which could result in reduced structural integrity of the slat system. This condition could result in loss of the inboard leading edge slat and could cause the flightcrew to lose control of the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Service Bulletin Reference**

(f) In this AD, the term ''service bulletin'' means the Accomplishment Instructions of Boeing 707/720 Service Bulletin 2982, Revision 2, dated October 7, 1977.

**Repetitive Inspections**

(g) Before the accumulation of 10,000 total flight hours, or within 1,500 flight hours after the effective date of this AD, whichever occurs later, do a dye penetrant inspection to detect cracked or broken hinge fitting assemblies of the inboard leading edge slats in accordance with Part I, ''Inspection Data,'' of the service bulletin. Repeat the inspection at intervals not to exceed 1,500 flight hours, except as provided by paragraph (i) or (k) of this AD.

**Corrective Action**

(h) If any crack or broken assembly is found during any inspection required by paragraph (g) of this AD, before further flight, do the action specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD.

(1) Replace the hinge fitting assembly with a like serviceable part in accordance with Part I of the service bulletin.

(2) Replace the hinge fitting assembly with a like serviceable part on which the preventative modification specified in paragraph (i) of this AD has been done, in accordance with Part II of the service bulletin. This replacement defers the repetitive inspection requirements of paragraph (g) of this AD for 15,000 flight hours for that hinge fitting assembly.

(3) Replace the hinge fitting assembly with a new, improved part in accordance with Part III of the service bulletin. This replacement terminates the repetitive inspection requirements of paragraph (g) of this AD for that hinge fitting assembly.

**Note 1:** For this AD, a ''like serviceable part'' is a serviceable part listed in the ''Existing'' part number column of Table II of the service bulletin that has been inspected

and found to be crack free in accordance with paragraph (g) of this AD before installation. A ''new part'' is a part listed in the ''Replacement'' or ''Optional'' part number column of Table II of the service bulletin.

**Optional Preventative Modification (Defers Repetitive Inspections)**

(i) Doing a preventative modification by accomplishing all the procedures in Part II of the service bulletin, except as required by paragraph (j) of this AD, defers the repetitive inspections required by paragraph (g) of this AD. Within 15,000 flight hours after the preventive modification, do the repetitive inspections in paragraph (g) of this AD at intervals not to exceed 1,500 flight hours.

(j) If any crack is found during the preventative modification specified in paragraph (i) of this AD, before further flight, do the action specified in paragraph (h) of this AD.

**Optional Terminating Action**

(k) Replacement of a hinge fitting assembly with a new, improved part terminates the repetitive inspection requirements of paragraph (g) of this AD for that assembly. Replacement of all hinge fitting assemblies with new, improved parts terminates the repetitive inspection requirements of this AD. The replacement must be done in accordance with Part III of the service bulletin.

**Actions Accomplished Using a Previous Issue of the Service Bulletin**

(l) Actions accomplished before the effective date of this AD using Boeing 707/720 Service Bulletin 2982, Revision 1, dated June 29, 1970, are considered acceptable for compliance with the corresponding action in this AD.

**Alternative Methods of Compliance (AMOCs)**

(m)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for a preventive modification of hinge fitting assemblies of the inboard leading edge slat if it is approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

**Material Incorporated by Reference**

(n) You must use Boeing 707/720 Service Bulletin 2982, Revision 2, dated October 7, 1977, to perform the actions that are required by this AD, unless the AD specifies otherwise. Boeing 707/720 Service Bulletin 2982, Revision 2, dated October 7, 1977, contains the following list of effective pages:

| Page No. | Revision level shown on page | Date shown on page |
|---|---|---|
| 1–6, 8, 12 ... | 2 | Oct. 7, 1977. |
| 7, 9–11, 13–27. | 1 | June 29, 1970. |

The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on June 29, 2005.

**Kevin M. Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–13435 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–205–21703; Airspace Docket No. 05–ACE–19]**

## Modification of Legal Description of the Class D and Class E Airspace; Topeka, Forbes Field, KS

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** An examination of controlled airspace for Topeka, Forbes Field, KS has revealed discrepancies in the airport reference point used in the legal description for the Class E airspace designated as a surface area. This action corrects that discrepancy by incorporating the current airport reference point in the Class E surface area for Topeka, Forbes Field, KS. This action also removes references to effective dates and times established in advance by a Notice to Airmen from the legal descriptions for Class D, Class E2 and Class E4 airspace. The effective dates and times are now continuously published in the Airport/Facility Directory.

**DATES:** This direct final rule is effective on 0901 UTC, October 27, 2005. Comments for inclusion in the Rules Docket must be received on or before July 29, 2005.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–21703/Airspace Docket No. 05–ACE–19, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR part 71 modifies the legal description for Class D airspace and Class E airspace designated as a surface area at Topeka, Forbes Field, KS to contain Instrument Flight Rule (IFR) operations in controlled airspace. The areas are depicted on appropriate aeronautical charts. Class D airspace areas are published in paragraph 5000 of FAA Order 7400.9M. Airspace Designation and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas designated as surface areas are published in Paragraph 6002 and 6004 of the same FAA Order. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

**The Direct Final Rule Procedure**

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on

the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with new comment period.

**Comment Invited**

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–21703/Airspace Docket No. 05–ACE–19.'' The postcard will be date/time stamped and returned to the commenter.

**Agency Findings**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Forbes Field.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

*Paragraph 5000 Class D Airspace.*

* * * * *

**ACE KS D Topeka, Forbes Field, KS**

Topeka, Forbes Field, KS
(Lat. 38°57′03″ N., long 95°39′49″ W.)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.6-mile radius of Forbes Field.

* * * * *

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

* * * * *

**ACE KS E2 Topeka, Forbes Field, KS**

Topeka, Forbes Field, KS
(Lat. 38°57′03″ N., long. 95°39′49″ W.)

Within a 4.6-mile radius of Forbes Field.

* * * * *

*Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.*

* * * * *

**ACE KS E4 Topeka, Forbes Field, KS**

Topeka, Forbes Field, KS
(Lat. 38°57′03″ N., long. 95°39′49″ W.)
RIPLY LOM
(Lat. 38°53′06″ N., long. 95°34′53″ W.)

That airspace extending upward from the surface within 2.2 miles each side of the RIPLY LOM 317° bearing extending from the 4.6-mile radius of Forbes Field to 5.3 miles northwest of the airport and within 1.8 miles each side of Forbes Field ILS localizer southeast course extending from the 4.6-mile radius of Forbes Field to 0.9 miles southeast of the LOM excluding that airspace in the Topeka, Philip Billard Airport, KS, Class D airspace area.

* * * * *

Issued in Kansas City, MO, on June 28, 2005.

**Elizabeth S. Wallis,**

*Acting Area Director, Western Flight Services Operations.*

[FR Doc. 05–13645 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket FAA 2004–19084; Airspace Docket 04–ANM–08]**

## Establishment of Class E Airspace, Mariposa, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule will establish Class E airspace at Mariposa, CA. New Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) have been developed at Mariposa-Yosemite Airport. Additional Class E airspace extending upward from 700 feet above the surface is necessary for the safety of instrument flight rules (IFR) aircraft executing these new SIAPs and transitioning between the terminal and en route environment. This action also corrects a small error in the airport latitude and longitude description.

**DATES:** 0901 UTC August 04, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ed Haeseker, Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue SW., Renton, WA. 98055–4056; telephone (425) 227–2527.

**SUPPLEMENTARY INFORMATION:**

**History**

On November 23, 2004, the FAA published in the **Federal Register** a

notice of proposed rule making to establish Class E airspace at Mariposa, CA (69 FR 68104). New RNAV GPS SIAPs at Mariposa-Yosemite Airport, Mariposa, CA, makes it necessary to increase the controlled airspace. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that order.

**The Rule**

This amendment to 14 CFR part 71 establishes Class E airspace at Mariposa-Yosemite Airport, Mariposa, CA. New RNAV GPS SIAPs at Mariposa-Yosemite Airport make it necessary to establish the Class E Airspace. This controlled airspace extending upward from 700 feet or more above the surface is necessary for the containment and safety of IFR aircraft transitioning to/from the en route environment and executing these RNAV GPS SIAP procedures. The amendment also corrects an error in the airport latitude and longitude description.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows.

*Paragraph 6005. Class E Airspace are extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ANM CA E5 Mariposa, CA [NEW]**

Mariposa-Yosemite Airport
(Lat. 37°30′39.1″ N, long. 120°02′22.3″ W)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Mariposa-Yosemite Airport.

* * * * *

Issued in Seattle, Washington on July 1, 2005.

**Danial T. Mawhorter,**

*Acting Area Director, Western En Route and Oceanic Operations.*

[FR Doc. 05–13660 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket FAA 2003–16460; Airspace Docket 02–ANM–16]**

## Establishment of Class E Airspace; Aspen, CO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule will establish Class E airspace at Aspen, CO. A reduction in operating hours of Class D airspace service at Aspen-Pitkin County/Sardy Field makes this action necessary. This Class E airspace extending upward from the surface of the earth will provide a controlled environment for the safety of aircraft executing Instrument Flight Rules (IFR) operations outside the hours of Class D airspace service.

**DATES:** 0901 UTC July 07, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ed Haeseker, Federal Aviation Administration, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–2527.

**SUPPLEMENTARY INFORMATION:**

**History**

On March 19, 2004, the FAA proposed to amend Title 14 Code of Federal Regulations part 71 (14 CFR part 71) to establish Class E airspace at Aspen, CO, (69 FR 12993). The proposed action would provide Class E airspace during the hours Class D airspace service is not available at Aspen-Pitkin County/Sardy Field Aspen, CO. This Class E airspace extending upward from the surface of the earth will provide a controlled environment for the safety of aircraft executing IFR operations outside the hours of Class D airspace service.

Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6002 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that order.

**The Rule**

This amendment to 14 CFR part 71 establishes Class E airspace at Aspen, CO, by providing additional controlled airspace for aircraft executing IFR procedures at Aspen-Pitkin County/Sardy Field during the hours Class D airspace service is not available. This Class E airspace extending upward from the surface of the earth will provide a controlled environment for the safety of aircraft executing IFR operations outside the hours of Class D airspace service.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when

promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS.

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

*Paragraph 6002 Class E Airspace area extending upward from the surface of the earth.*

* * * * *

**ANM OR E2 Aspen, CO [Added]**

Aspen-Pitkin County/Sardy Field
(Lat. 39°13′23″ N., long. 106°52′08″ W.)

Within a 4.3-mile radius of Aspen-Pitkin County/Sardy Field. This Class E airspace is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington on June 10, 2005.

**Raul C. Treviño,**

*Area Director, Western En Route and Oceanic Operations.*

[FR Doc. 05–13644 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA 2003–16676; Airspace Docket No. 03–ASO–16]**

**RIN 2120–AA66**

## Revision of VOR Federal Airway V–537

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action revises Very High Frequency Omnidirectional Range (VOR) Federal Airway V–537 by changing the origination point of the airway from the Vero Beach, FL, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) to the Palm Beach, FL, VORTAC. The FAA is taking this action to enhance the management of aircraft in the Palm Beach, FL, area.

**EFFECTIVE DATE:** 0901 UTC, October 27, 2005.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 3, 2004, the FAA proposed to modify V–537 by changing the origination point of the airway from the Vero Beach VORTAC to the Palm Beach VORTAC (69 FR 5098). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received. With the exception of editorial changes, this amendment is the same as that proposed in the notice.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising the legal description of V–537 in the vicinity of Palm Beach, FL. The revision incorporates into the airway routing that is used by air traffic control when directing aircraft to Palm Beach, FL. Currently, Miami Air Route Traffic Control Center issues a clearance to aircraft destined for the Palm Beach terminal area by directing aircraft to proceed via the Vero Beach VORTAC, then along V–295 to STOOP intersection, then via V–492 to the Palm Beach VORTAC. This modification incorporates this routing as an extension to V–537. The modification to V–537 will reduce pilot-controller communications, alleviate radio frequency congestion, reduce the potential for pilot readback errors, and enhance the management of aircraft operations in the Vero Beach-Palm Beach area.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be published subsequently in the order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

*Paragraph 6010(a)—Domestic VOR Federal Airways.*

* * * * *

**V–537 [Revised]**

From Palm Beach, FL; INT Palm Beach 356° and Vero Beach, FL, 143° radials; Vero Beach; INT Vero Beach 318° and Orlando. FL, 140° radials; INT Orlando 140° and Melbourne, FL 298° radials; INT Melbourne 298° and Ocala, FL 145° radials; Ocala; Gators, FL; Greenville, FL; Moultrie, GA; to Macon, GA.

* * * * *

Issued in Washington, DC, on July 6, 2005.

**Edith V. Parish,**

*Acting Manager, Airspace and Rules.*

[FR Doc. 05–13682 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 522 and 556

### Implantation or Injectable Dosage Form New Animal Drugs; Tulathromycin

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for the veterinary prescription use of tulathromycin solution in cattle and in swine, by injection, for the management of respiratory disease. FDA is also amending the regulations to add the acceptable daily intake for total residues of tulathromycin and tolerances for residues of tulathromycin in edible tissues of cattle and swine.

**DATES:** This rule is effective July 12, 2005.

**FOR FURTHER INFORMATION CONTACT:** Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.gov*.

**SUPPLEMENTARY INFORMATION:** Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed NADA 141–244 for DRAXXIN (tulathromycin) Injectable Solution. The NADA provides for the veterinary prescription use of tulathromycin solution in cattle, by subcutaneous injection, for the treatment of bovine respiratory disease (BRD) associated with *Mannheimia haemolytica*, *Pasteurella multocida*, and *Histophilus somni* (*Haemophilus somnus*); for the control of respiratory disease in cattle at high risk of developing BRD associated with *M. haemolytica*, *P. multocida*, and *H. somni*; and in swine, by intramuscular injection, for the treatment of swine respiratory disease (SRD) associated with *Actinobacillus pleuropneumoniae*, *P. multocida*, *Bordetella bronchiseptica*, and *H. parasuis*. The application is approved as of May 24, 2005, and the regulations are amended in part 522 (21 CFR part 522) by adding § 522.2630 and in part 556 (21 CFR part 556) by adding § 556.745 to reflect the approval. The basis of approval is discussed in the freedom of information (FOI) summary.

In accordance with the FOI provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning May 24, 2005.

The agency has determined under 21 CFR 25.33(d)(5) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects**

*21 CFR Part 522*

Animal drugs.

*21 CFR Part 556*

Animal drugs, Foods.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

■ 2. Section 522.2630 is added to read as follows:

**§ 522.2630 Tulathromycin.**

(a) *Specifications.* Each milliliter of solution contains 100 milligrams (mg) tulathromycin.

(b) *Sponsor.* See No. 000069 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.745 of this chapter.

(d) *Conditions of use*—(1) *Beef and nonlactating dairy cattle*—(i) *Amount.* 2.5 mg per kilogram (/kg) body weight as a single subcutaneous injection in the neck.

(ii) *Indications for use.* For the treatment of bovine respiratory disease (BRD) associated with *Mannheimia haemolytica*, *Pasteurella multocida*, and *Histophilus somni* (*Haemophilus somnus*); for the control of respiratory disease in cattle at high risk of developing BRD associated with *M. haemolytica*, *P. multocida*, and *H. somni.*

(iii) *Limitations.* Cattle intended for human consumption must not be slaughtered within 18 days from the last treatment. Do not use in female dairy cattle 20 months of age or older. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Swine*—(i) *Amount.* 2.5 mg/kg body weight as a single intramuscular injection in the neck.

(ii) *Indications for use.* For the treatment of swine respiratory disease (SRD) associated with *Actinobaccillus pleuropneumoniae*, *P. multocida*, *Bordetella bronchiseptica*, and *H. parasuis*.

(iii) *Limitations.* Swine intended for human consumption must not be slaughtered within 5 days from the last treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

## PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 3. The authority citation for 21 CFR part 556 continues to read as follows:

**Authority:** 21 U.S.C. 342, 360b, 371.

■ 4. Section 556.745 is added to read as follows:

**§ 556.745 Tulathromycin.**

(a) *Acceptable daily intake (ADI).* The ADI for total residues of tulathromycin is 15 micrograms per kilogram of body weight per day.

(b) *Tolerances*—(1) *Cattle*—(i) *Liver (the target tissue)*. The tolerance for CP–60,300 (the marker residue) is 5.5 parts per million (ppm).

(ii) [Reserved]

(2) *Swine*—(i) *Kidney (the target tissue)*. The tolerance for CP–60,300 (the marker residue) is 15 ppm.

(ii) [Reserved]

(c) *Related conditions of use*. See § 522.2630 of this chapter.

Dated: June 20, 2005.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 05–13586 Filed 7–11–05; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF STATE

### 22 CFR Part 126

**[Public Notice 5130]**

**RIN 1400–ZA17**

## Amendments to the International Traffic in Arms Regulations: Part 126

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State is amending and/or clarifying the content of the International Traffic in Arms Regulations (ITAR). The affected part of the ITAR is: Part 126—Policies and Provisions. See Supplementary Information for a description of the changes and clarifications made.

**EFFECTIVE DATE:** July 12, 2005.

**ADDRESSES:** Interested parties are invited to submit written comments to the Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Regulatory Change, 12th Floor, SA–1, Washington, DC 20522–0112. E-mail comments may be sent to *DDTCResponseTeam@state.gov* with an appropriate subject line. Persons with access to the Internet may also view this notice by going to the regulations.gov Web site at: *http://www.regulations.gov*. Comments will be accepted at any time.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Tomchik, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–2799 or FAX (202) 261–8199. ATTN: Regulatory Change, USML Sections 126.5 and 126.15.

**SUPPLEMENTARY INFORMATION:** Two changes are made to the International Traffic in Arms Regulations (ITAR) Part 126—General Policies and Provisions. The first change affects 22 CFR 126.5. This section describes *inter alia* the modalities by which exporters, without a license issued by the Directorate of Defense Trade Controls (DDTC), may conduct permanent and temporary exports of defense articles to Canada, and temporary imports from Canada. These changes to 22 CFR 126.5 are designed to clarify for exporters the range of defense articles, related technical data, and defense services that will continue to require a license issued by the Directorate of Defense Trade Controls for export to or temporary import from Canada.

The list of items excluded from the provisions of Section 126.5 is outlined in paragraph (b). That list is amended in the following ways: the text of 126.5(b)(12) is amended to reflect textual revisions to Category XIV of the U.S. Munitions List regarding chemical and biological agents. The body of chemical agents encompassed by 126.5(b)(12) and previously controlled in a single paragraph of the Category now has been grouped by type and distributed into several distinct paragraphs. The text also clarifies but does not change the scope of biological agents controlled. Other changes are made to reflect the redesignation of paragraphs in the Category.

The second change is a result of statutory direction. A new section of the ITAR implements Section 1225 of Public Law 108–375 regarding ''Bilateral Exchanges and Trade in Defense Articles and Defense Services Between the United States and the United Kingdom and Australia.'' This section, to be designated 126.15, calls for the expeditious processing of license applications for the export of defense articles and services to Australia or the United Kingdom, consistent with national security and the requirements of the Arms Export Control Act (22 U.S.C. 2751 et seq.

*Regulatory Analysis and Notices:* This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996. It will not have substantial direct effects on the States, the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Orders 12372 and 13132. This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

**List of Subjects in 22 CFR Part 126**

Arms and munitions, Exports.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Part 126 is amended as follows:

## PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for Part 126 continues to read as follows:

**Authority:** Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375.

■ 2. Section 126.5 is amended by revising paragraph (b)(12) to read as follows:

**§ 126.5 Canadian exemptions.**

* * * * *

(b) * * *

(12) Chemical agents listed in Category XIV (a), (d), and (e), biological agents and biologically derived substances in Category XIV (b), and equipment listed in Category XIV (f) for dissemination of the chemical agents and biological agents listed in Category XIV (a), (b), (d), and (e).

* * * * *

■ 3. Section 126.15 is added to read as follows:

**§ 126.15 Expedited processing of license applications for the export of defense articles and defense services to Australia or the United Kingdom.**

(a) Any application submitted for authorization of the export of defense articles or services to Australia or the United Kingdom will be expeditiously processed by the Department of State, in consultation with the Department of Defense. Such license applications will not be referred to any other Federal department or agency, except when the defense articles or defense services are classified or exceptional circumstances apply. (See section 1225, Pub. L. 108–375).

(b) To be eligible for the expedited processing in paragraph (a) of this section, the destination of the prospective export must be limited to Australia or the United Kingdom. No

other country may be included as intermediary or ultimate end-user.

Dated: June 23, 2005.

**Robert G. Joseph,**

*Under Secretary, Arms Control and International Security, Department of State.*

[FR Doc. 05–13643 Filed 7–11–05; 8:45 am]

**BILLING CODE 4710–25–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 602

**[TD 9210]**

**RIN 1545–BE75**

## LIFO Recapture Under Section 1363(d)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulation.

**SUMMARY:** This document contains final regulations regarding LIFO recapture by corporations converting from C corporations to S corporations. The purpose of these regulations is to provide guidance on the LIFO recapture requirement when the corporation holds inventory accounted for under the last-in, first-out (LIFO) method (LIFO inventory) indirectly through a partnership. These regulations affect C corporations that own interests in partnerships holding LIFO inventory and that elect to be taxed as S corporations or that transfer such partnership interests to S corporations in nonrecognition transactions. These regulations also affect S corporations receiving such partnership interests from C corporations in nonrecognition transactions.

**DATES:** *Effective Date:* These regulations are effective July 12, 2005.

*Applicability Date:* These regulations apply to S elections and transfers made on or after August 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Pietro Canestrelli, at (202) 622–3060 and Martin Schäffer, at (202) 622–3070 (not toll free numbers).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1906.

The collection of information in these final regulations is in § 1.1363–2(e)(3). This information is required to inform the IRS of partnerships electing to increase the basis of inventory to reflect any amount included in a partner's income under section 1363(d).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

*Estimated total annual reporting burden:* 200 hours.

The estimated annual burden per respondent varies from 1 to 3 hours, depending on individual circumstances, with an estimated average of 2 hours.

*Estimated number of respondents:* 100.

*Estimated annual frequency of responses:* On occasion.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

This document contains amendments to 26 CFR part 1 under section 1363(d) of the Internal Revenue Code (Code). Section 1363(d)(1) provides that a C corporation that owns LIFO inventory and that elects under section 1362(a) to be taxed as an S corporation must include in its gross income for its final tax year as a C corporation the LIFO recapture amount. Under section 1363(d)(3), the LIFO recapture amount is the excess of the inventory amount of the inventory using the first-in, first-out (FIFO) method (the FIFO value) over the inventory amount of the inventory using the LIFO method (the LIFO value) at the close of the corporation's final tax year as a C corporation (essentially, the amount of income the corporation has deferred by using the LIFO method rather than the FIFO method).

Final regulations (TD 8567) under section 1363(d) were published in the **Federal Register** on October 7, 1994 (59 FR 51105) to describe the recapture of LIFO benefits when a C corporation that owns LIFO inventory elects to become an S corporation or transfers LIFO inventory to an S corporation in a nonrecognition transaction. The regulations did not explicitly address the indirect ownership of inventory through a partnership.

A notice of proposed rulemaking (REG–149524–03, 2004–39 I.R.B. 528) was published in the **Federal Register** on August 13, 2004 (69 FR 50109). The proposed regulations provided guidance for situations in which a C corporation that owns LIFO inventory through a partnership (or through tiered partnerships) converts to an S corporation or transfers its partnership interest to an S corporation in a nonrecognition transaction. One person submitted comments in response to the notice of proposed rulemaking. A public hearing was held on December 8, 2004. After consideration of the comments, the proposed regulations are adopted as final regulations with the modifications discussed below.

### Summary of Comments and Explanation of Revisions

The proposed regulations provided that a C corporation that holds an interest in a partnership owning LIFO inventory must include the lookthrough LIFO recapture amount in its gross income where the corporation either elects to be an S corporation or transfers its interest in the partnership to an S corporation in a nonrecognition transaction. The proposed regulations defined the lookthrough LIFO recapture amount as the amount of income that would be allocated to the corporation, taking into account section 704(c) and § 1.704–3, if the partnership sold all of its LIFO inventory for the FIFO value. A corporate partner's lookthrough LIFO recapture amount must be determined, in general, as of the day before the effective date of the S corporation election or, if the recapture event is a transfer of a partnership interest to an S corporation, the date of recapture event is a transfer of a partnership interest to an S corporation, the date of the transfer (the recapture date). The proposed regulations provided that, if a partnership is not otherwise required to determine inventory values on the recapture date, the lookthrough LIFO recapture amount may be determined based on inventory values of the partnership's opening inventory for the year that includes the recapture date.

The sole commentator suggested that the regulations provide that, if the lookthrough LIFO recapture amount is determined based on inventory values of the partnership's opening inventory for the year that includes the recapture

date, then the lookthrough LIFO recapture amount must be adjusted to take into account any adjustments to the partnership's basis in its LIFO inventory that result from transactions occurring during the period from the start of the partnership's tax year to the end of the recapture date. Thus, the lookthrough LIFO recapture amount would have to reflect any adjustments to the basis of LIFO inventory during that period under sections 734(b), 737(c), or 751(b). The final regulations adopt this suggestion.

The proposed regulations provided that a corporation owning LIFO inventory through a partnership must increase its basis in its partnership interest by the lookthrough LIFO recapture amount. The proposed regulations also allowed the partnership through which the LIFO inventory is owned to elect to adjust the basis of partnership inventory (or lookthrough partnership interests held by that partnership) to account for LIFO recapture. This adjustment to basis is patterned in manner and effect after the adjustment in section 743(b). Thus, the basis adjustment constitutes an adjustment to the basis of the LIFO inventory (or lookthrough partnership interests held by that partnership) with respect to the corporate partner only; no adjustment is made to the partnership's common basis.

The Treasury Department and the IRS requested comments on whether the partnership should be required, in some or all circumstances, to increase the basis of partnership assets by the lookthrough LIFO recapture amount attributable to those assets. No comments were received on this question. Therefore, the final regulations follow the rule of the proposed regulations.

The sole commentator recommended that the regulations should extend the availability of a section 743(b)-type basis adjustment to the purchase of a lookthrough partnership interest by a C corporation that subsequently makes an S election (or subsequently disposes of the partnership interest in a nontaxable carryover basis transaction). It has been determined that this recommendation is beyond the scope of the regulations and, so, is not included in the final regulations.

The commentator recommended that the regulations provide for the retroactive revaluation of LIFO inventories under § 1.704–1(b)(2)(iv)(*f*) when a non-C corporation partner has been admitted to a partnership (or the non-C-corporation partner's relative interest in the partnership has increased) within a period of two years ending on the date when a C corporation partner in the same partnership makes an S election (or transfers its partnership interest to an S corporation in a nontaxable carryover basis transaction). It has been determined that this recommendation is beyond the scope of the regulations and, so, is not included in the final regulations.

Regarding the payment of the LIFO recapture tax during an S year, the commentator made two suggestions. First, notwithstanding section 1371(c)(1), the regulations should provide that the S corporation's earnings and profits be reduced upon such a payment. Second, notwithstanding section 1367(a)(2)(D), the regulations should provide that the stock basis of the shareholders of the S corporation not be reduced upon such a payment. The issues raised by the payment by an S corporation of taxes attributable to a taxable year in which the corporation was a C corporation are not unique to a payment of the LIFO recapture tax and are beyond the scope of these regulations.

Finally, the commentator questioned whether it is appropriate to issue these regulations under the authority of section 337(d). The Treasury Department and the IRS continue to believe that issuing these regulations under the authority of section 337(d) is appropriate, because Congress's purpose in enacting section 1363(d) was to prevent taxpayers owning LIFO inventory from avoiding the built-in gain rules of section 1374. H.R. Rep. No. 100–391 (Parts 1 and 2), 1098 (1987).

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866; therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that few corporations engage in the type of transactions that are subject to these regulations (the conversion from C corporation to S corporation status while holding an interest in a partnership that owns LIFO inventory or the transfer of an interest in such a partnership by a C corporation to an S corporation in a nonrecognition transaction). Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. These final regulations are necessary to prevent abusive transactions involving partnerships and S corporations. Accordingly, good cause is found for dispensing with a delayed effective date pursuant to 5 U.S.C. 553(d)(3). Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Drafting Information

The principal authors of these regulations are Pietro Canestrelli and Martin Schaffer, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

## List of Subjects

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 1.1363–2 also issued under 26 U.S.C. 337(d). * * *

■ **Par. 2.** Section 1.1363–2 is amended by:

■ 1. Redesignating paragraphs (b), (c), and (d) as paragraphs (d), (e), and (g), respectively.

■ 2. Adding new paragraphs (b), (c), (f), and (g)(3).

■ 3. Revising newly designated paragraphs (d) and (e).

The revision and additions read as follows:

### § 1.1363–2 Recapture of LIFO benefits.

* * * * *

(b) *LIFO inventory held indirectly through partnership.* A C corporation must include the lookthrough LIFO recapture amount (as defined in paragraph (c)(4) of this section) in its gross income—

(1) In its last taxable year as a C corporation if, on the last day of the corporation's last taxable year before its S corporation election becomes effective, the corporation held a

lookthrough partnership interest (as defined in paragraph (c)(3) of this section); or

(2) In the year of transfer by the C corporation to an S corporation of a lookthrough partnership interest if the corporation transferred its lookthrough partnership interest to the S corporation in a nonrecognition transaction (within the meaning of section 7701(a)(45)) in which the transferred interest constitutes transferred basis property (within the meaning of section 7701(a)(43)).

(c) *Definitions and special rules*—(1) *Recapture date.* In the case of a transaction described in paragraph (a)(1) or (b)(1) of this section, the recapture date is the day before the effective date of the S corporation election. In the case of a transaction described in paragraph (a)(2) or (b)(2) of this section, the recapture date is the date of the transfer of the partnership interest to the S corporation.

(2) *Determination of LIFO recapture amount.* The LIFO recapture amount shall be determined as of the end of the recapture date for transactions described in paragraph (a)(1) of this section, and as of the moment before the transfer occurs for transactions described in paragraph (a)(2) of this section.

(3) *Lookthrough partnership interest.* A partnership interest is a lookthrough partnership interest if the partnership owns (directly or indirectly through one or more partnerships) assets accounted for under the last-in, first-out (LIFO) method (LIFO inventory).

(4) *Lookthrough LIFO recapture amount*—(i) *In general.* For purposes of this section, a corporation's lookthrough LIFO recapture amount is the amount of income that would be allocated to the corporation, taking into account section 704(c) and § 1.704–3, if the partnership sold all of its LIFO inventory for the inventory's FIFO value. For this purpose, the FIFO value of inventory is the inventory amount of the inventory assets under the first-in, first-out method of accounting authorized by section 471, determined in accordance with section 1363(d)(4)(C).

(ii) *Determination of lookthrough LIFO recapture amount.* Except as provided in paragraph (c)(4)(iii) of this section, the lookthrough LIFO recapture amount shall be determined as of the end of the recapture date for transactions described in paragraph (b)(1) of this section, and as of the moment before the transfer occurs for transactions described in paragraph (b)(2) of this section.

(iii) *Alternative rule.* If the partnership is not otherwise required to determine the inventory amount of the inventory using the LIFO method (the LIFO value) on the recapture date, the partnership may determine the lookthrough LIFO recapture amount as though the FIFO and LIFO values of the inventory on the recapture date equaled the FIFO and LIFO values of the opening inventory for the partnership's taxable year that includes the recapture date. For this purpose, the opening inventory includes inventory contributed by a partner to the partnership on or before the recapture date and excludes inventory distributed by the partnership to a partner on or before the recapture date. A partnership that applies the alternative method of this paragraph (c)(4)(iii) to calculate the lookthrough LIFO recapture amount must take into account any adjustments to the partnership's basis in its LIFO inventory that result from transactions occurring after the start of the partnership's taxable year and before the end of the recapture date. For example, the lookthrough LIFO recapture amount must be adjusted to take into account any adjustments to the basis of LIFO inventory during that period under sections 734(b), 737(c), or 751(b).

(d) *Payment of tax.* Any increase in tax caused by including the LIFO recapture amount or the lookthrough LIFO recapture amount in the gross income of the C corporation is payable in four equal installments. The C corporation must pay the first installment of this payment by the due date of its return, determined without regard to extensions, for the last taxable year it operated as a C corporation if paragraph (a)(1) or (b)(1) of this section applies, or for the taxable year of the transfer if paragraph (a)(2) or (b)(2) of this section applies. The three succeeding installments must be paid—

(1) For a transaction described in paragraph (a)(1) or (b)(1) of this section, by the corporation that made the election under section 1362(a) to be an S corporation, on or before the due date for the corporation's returns (determined without regard to extensions) for the succeeding three taxable years; and

(2) For a transaction described in paragraph (a)(2) or (b)(2) of this section, by the transferee S corporation on or before the due date for the transferee corporation's returns (determined without regard to extensions) for the succeeding three taxable years.

(e) *Basis adjustments*—(1) *General rule.* Appropriate adjustments to the basis of inventory are to be made to reflect any amount included in income under paragraph (a) of this section.

(2) *LIFO inventory owned through a partnership*—(i) *Basis of corporation's partnership interest.* Appropriate adjustments to the basis of the corporation's lookthrough partnership interest are to be made to reflect any amount included in income under paragraph (b) of this section.

(ii) *Basis of partnership assets.* A partnership directly holding LIFO inventory that is taken into account under paragraph (b) of this section may elect to adjust the basis of that LIFO inventory. In addition, a partnership that holds, through another partnership, LIFO inventory that is taken into account under paragraph (b) of this section may elect to adjust the basis of that partnership interest. Any adjustment under this paragraph (e)(2) to the basis of inventory held by the partnership is equal to the amount of LIFO recapture attributable to the inventory. Likewise, any adjustment under this paragraph (e)(2) to the basis of a lookthrough partnership interest held by the partnership is equal to the amount of LIFO recapture attributable to the interest. A basis adjustment under this paragraph (e)(2) is treated in the same manner and has the same effect as an adjustment to the basis of partnership property under section 743(b). See § 1.743–1(j).

(3) *Election.* A partnership elects to adjust the basis of its inventory and any lookthrough partnership interest that it owns by attaching a statement to its original or amended income tax return for the first taxable year ending on or after the date of the S corporation election or transfer described in paragraph (b) of this section. This statement shall state that the partnership is electing under this paragraph (e)(3) and must include the names, addresses, and taxpayer identification numbers of any corporate partner liable for tax under paragraph (d) of this section and of the partnership, as well as the amount of the adjustment and the portion of the adjustment that is attributable to each pool of inventory or lookthrough partnership interest that is held by the partnership.

(f) *Examples.* The following examples illustrate the rules of this section:

*Example 1.* (i) G is a C corporation with a taxable year ending on June 30. GH is a partnership with a calendar year taxable year. G has a 20 percent interest in GH. The remaining 80 percent interest is owned by an individual. On April 25, 2005, G contributed inventory that is LIFO inventory to GH, increasing G's interest in the partnership to 50 percent. GH holds no other LIFO inventory, and there are no other adjustments to the partnership's basis in its LIFO inventory between January 1, 2005 and the end of the recapture date. G elects to be an S corporation effective July 1, 2005. The

recapture date is June 30, 2005 under paragraph (c)(1) of this section. GH elects to use the LIFO method for the inventory and determines that the FIFO and LIFO values of the opening inventory for GH's 2005 taxable year, including the inventory contributed by G, are $200 and $120, respectively.

(ii) Under paragraph (c)(4)(iii) of this section, GH is not required to determine the FIFO and LIFO values of the inventory on the recapture date. Instead, GH may determine the lookthrough LIFO recapture amount as though the FIFO and LIFO values of the inventory on the recapture date equaled the FIFO and LIFO values of the opening inventory for the partnership's taxable year (2005) that includes the recapture date. For this purpose, under paragraph (c)(4) of this section, the opening inventory includes the inventory contributed by G. The amount by which the FIFO value ($200) exceeds the LIFO value ($120) in GH's opening inventory is $80. Thus, if GH sold all of its LIFO inventory for $200, it would recognize $80 of income. G's lookthrough LIFO recapture amount is $80, the amount of income that would be allocated to G, taking into account section 704(c) and § 1.704–3, if GH sold all of its LIFO inventory for the FIFO value. Under paragraph (b)(1) of this section, G must include $80 in income in its taxable year ending on June 30, 2005. Under paragraph (e)(2) of this section, G must increase its basis in its interest in GH by $80. Under paragraphs (e)(2) and (3) of this section, and in accordance with section 743(b) principles, GH may elect to increase the basis (with respect to G only) of its LIFO inventory by $80.

*Example 2.* (i) J is a C corporation with a calendar year taxable year. JK is a partnership with a calendar year taxable year. J has a 30 percent interest in the partnership. JK owns LIFO inventory that is not section 704(c) property. J elects to be an S corporation effective January 1, 2005. The recapture date is December 31, 2004 under paragraph (c)(1) of this section. JK determines that the FIFO and LIFO values of the inventory on December 31, 2004 are $240 and $140, respectively.

(ii) The amount by which the FIFO value ($240) exceeds the LIFO value ($140) on the recapture date is $100. Thus, if JK sold all of its LIFO inventory for $240, it would recognize $100 of income. J's lookthrough LIFO recapture amount is $30, the amount of income that would be allocated to J if JK sold all of its LIFO inventory for the FIFO value (30 percent of $100). Under paragraph (b)(1) of this section, J must include $30 in income in its taxable year ending on December 31, 2004. Under paragraph (e)(2) of this section, J must increase its basis in its interest in JK by $30. Under paragraphs (e)(2) and (3) of this section, and in accordance with section 743(b) principles, JK may elect to increase the basis (with respect to J only) of its inventory by $30.

(g) * * *

(3) The provisions of paragraphs (b), (c), (d), (e)(2), (e)(3), and (f) of this section apply to S elections and transfers made on or after August 13, 2004. The rules that apply to S elections and transfers made before August 13, 2004, are contained in § 1.1363–2 as in effect prior to August 13, 2004 (see 26 CFR part 1 revised as of April 1, 2005).

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 3.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

■ **Par. 4.** In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

* * * * *

(b)* * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * * | |
| 1.1363–2 ..... | 1545–1906 |
| * * * * * | |

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: June 23, 2005.

**Eric Solomon,**

*Acting Deputy Assistant Secretary of the Treasury.*

[FR Doc. 05–13383 Filed 7–11–05; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[COTP Tampa 05–079]**

**RIN 1625–AA00, AA87**

## Safety and Security Zone; Tampa Bay, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule; request for comments.

**SUMMARY:** The Coast Guard is establishing a temporary safety and security zone on the waters within Tampa Bay, Florida, including Sparkman Channel, Garrison Channel (east of the Beneficial Bridge), Ybor Turning Basin, and Ybor Channel. This rule is necessary to protect participants and spectators from the hazards associated with the recurring launch of fireworks from a barge on the navigable waters and to protect the security of the Tampa Bay, Florida port infrastructure from potential subversive acts by vessels or persons during these fireworks events.

**DATES:** This rule is effective from 8:35 p.m. on June 24, 2005 through 12:25 a.m. on January 1, 2006. Comments and related material must reach the Coast Guard on or before September 12, 2005.

**ADDRESSES:** You may mail comments and related material to Coast Guard Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606–3598. The Waterways Management Division maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Marine Safety Office Tampa between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Jennifer Andrew at Coast Guard Marine Safety Office Tampa (813) 228–2191 Ext 8203.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued and delay the rule's effective date, is contrary to public interest because immediate action is necessary to protect the public and waters of the United States. The Coast Guard would be unable to effectively ensure safety and security on the navigable waters in the vicinity of the Port during these fireworks events without this safety and security zone in place.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and will place Coast Guard vessels in the vicinity of this zone to advise mariners of the restriction.

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for

this rulemaking (COTP Tampa 05–079), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Marine Safety Office Tampa at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

**Background and Purpose**

Downtown Tampa Attractions Association will be conducting thirteen recurring fireworks demonstrations in the Port of Tampa Bay, Florida. This rule is needed to protect spectator craft in the vicinity of the fireworks presentation from the hazards associated with the storage, preparation and launching of fireworks. Also, since the fireworks demonstrations will be conducted near several major port facilities, the nature of these recurring events could increase the port's vulnerability to possible terrorist activities compromising the security of the port. The recurring events provide a repetitive and predictable situation that persons intending to conduct subversive acts could use to mask their activities. Further, the nature of the repetitive and predictable fireworks events could desensitize already established security measures by providing a possible distraction to those protecting nearby facilities.

**Discussion of Proposed Rule**

The safety and security zone encompasses the following waters within Tampa Bay: Sparkman Channel, Garrison Channel (east of the Beneficial Bridge), Ybor Turning Basin, and Ybor Channel. This rule restricts vessels from entering, remaining within, anchoring, mooring or transiting the safety and security zone without the express permission of the Captain of the Port or his designated representative. Vessels and persons that receive permission to enter the safety and security zone must comply with the instructions of the Captain of the Port or his or her designated representative and must not proceed closer than 120 yards, in any direction, from the fireworks launch barge located in approximate position 27°56′28″ N, 082°26′45″ W, without obtaining further permission from the Captain of the Port or his designated representative. This rule will be effective from 8:35 p.m. on June 24, 2005 through 12:25 a.m. on January 1, 2006. The safety and security zone will only be enforced from 8:35 p.m. until 9:20 p.m. on June 24, July 1, July 4, July 8, July 15, July 22, July 29, August 5, August 12, August 19, August 26, September 4, 2005 and from 11:40 p.m. December 31, 2005 until 12:25 a.m. on January 1, 2006.

**Regulatory Evaluation**

This temporary final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The rule will only be enforced for forty-five minutes on each of the thirteen listed dates when fireworks displays are planned. Moreover, vessels may still enter the safety and security zone with the express permission of the Captain of the Port Tampa or his designated representative.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit Sparkman Channel, Garrison Channel (east of the Beneficial Bridge), Ybor Turning Basin, and Ybor Channel from 8:35 p.m. until 9:20 p.m. on June 24, July 1, July 4, July 8, July 15, July 22, July 29, August 5, August 12, August 19, August 26, September 4, 2005, and from 11:40 p.m. December 31, 2005 until 12:25 a.m. on January 1, 2006.

This safety and security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will only be enforced for forty-five minutes on each of the thirteen listed dates when fireworks displays are planned. Moreover, vessels may still enter the safety and security zone with the express permission of the Captain of the Port Tampa or his designated representative.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have

determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From June 24, 2005 through January 1, 2006, add § 165.T07–079 to read as follows:

**§ 165.T07–079 Safety and Security Zone; Tampa Bay, Florida.**

(a) *Regulated area.* The following area is a safety and security zone: All waters of Tampa Bay, from surface to bottom, within the following: Garrison Channel, east of an imaginary line connecting point 1: 27°56′31″ N, 082°26′58″ W; south to point 2: 27°56′26″ N, 082°26′58″ W; and including Ybor Turning Basin, Ybor Channel, and all waters in Sparkman Channel north of an imaginary line connecting point 3: 27°55′32″ N, 082°26′56″ W, east to point 4: 27°55′32″ N, 082°26′48″ W. All coordinates referenced use datum: NAD 83

(b) *Regulations.* (1) Vessels and persons are prohibited from entering, remaining within, anchoring, mooring or transiting this zone unless authorized by the Coast Guard Captain of the Port Tampa or his designated representative.

(2) Persons desiring to transit the regulated area may contact the Captain of the Port at telephone number 813–228–2191 ext 8101 or on VHF channel 16 (156.8 MHz) to seek permission. Vessels and persons that receive permission to enter or remain within the safety and security zone must comply with the instructions of the Captain of the Port or his or her designated representative and must not, in any event, proceed closer than 120 yards, in any direction, from the fireworks launch barge located in approximate position 27°56′28″ N, 082°26′45″ W, without obtaining further permission from the Captain of the Port or his designated representative.

(c) *Definitions.* The following definitions apply to this section:

*Designated representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP), Tampa, Florida, in the enforcement of the regulated navigation areas and security zones.

(d) *Enforcement period.* This safety and security zone will be enforced from 8:35 p.m. until 9:20 p.m. on June 24, July 1, July 4, July 8, July 15, July 22, July 29, August 5, August 12, August 19, August 26, September 4, 2005, and from 11:40 p.m. December 31, 2005 until 12:25 a.m. on January 1, 2006.

Dated: June 20, 2005.

**J.M. Farley,**

*Captain, U.S. Coast Guard, Captain of the Port.*

[FR Doc. 05–13665 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[R10–OAR–2005–WA–0006; FRL–7936–3]**

### Approval and Promulgation of Air Quality Implementation Plans; Washington; Correcting Amendments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule; correcting amendments.

**SUMMARY:** EPA is taking direct final action on amendments which correct typographical numbering errors in the instructions amending the Code of Federal Regulations (CFR) in the approval of the serious area plan for attainment of the annual and 24-hour $PM_{10}$ standards for Wallula, Washington, published on May 2, 2005. $PM_{10}$ is particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

**DATES:** This direct final rule will be effective September 12, 2005, without further notice, unless EPA receives adverse comments by August 11, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. R10–OAR–2005–WA–0006, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Agency Web Site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *Mail:* Colleen Huck, Office of Air, Waste and Toxics, AWT–107, EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101.
- *Hand Delivery:* Colleen Huck, Office of Air, Waste and Toxics, AWT–107, 9th Floor, EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. R10–OAR–2005–WA–0006. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at EPA, Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Seattle, Washington, from 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Colleen Huck at telephone number: (206) 553–1770, e-mail address: *Huck.Colleen@epa.gov*, fax number: (206) 553–0110, or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

On May 2, 2005 (70 FR 22597), EPA approved a Washington State Implementation Plan (SIP) for the Wallula, Washington serious nonattainment area for $PM_{10}$. In approving the Wallula $PM_{10}$ serious area plan, EPA inadvertently made typographical errors in the amendatory instructions contained at the end of the notice. The third amendatory instruction contains an incorrect section number—§ 52.672. The section number should be identified as § 52.2475. In addition, EPA inadvertently added paragraph (e)(1) to § 52.2475 when that paragraph already existed. The intent of the rule was to amend that section by adding paragraph (e)(2). This document corrects the erroneous amendatory language.

#### II. Direct Final Action

EPA is publishing this action without a prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. In the proposed rules section of this **Federal Register** publication, however, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This direct final rule is effective on September 12, 2005 without further notice, unless EPA receives adverse comment by August 11, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal

requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 24, 2005.

**Ronald A. Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

■ Chapter I, title 40 of the Code of Federal Regulations is corrected by making the following correcting amendments:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart WW—Washington

■ 2. Section 52.2475 is amended by revising paragraphs (e)(1) and (2) to read as follows:

**§ 52.2475 Approval of plans.**

* * * * *

(e) * * *

(1) Yakima.

(i) EPA approves as a revision to the Washington State Implementation Plan, the Yakima County PM–10 Nonattainment Area Limited Maintenance Plan adopted by the Yakima Regional Clean Air Authority on June 9, 2004, and adopted and submitted by the Washington Department of Ecology on July 8, 2004.

(ii) [Reserved]

(2) Wallula.

(i) EPA approves as a revision to the Washington State Implementation Plan, the Wallula Serious Area Plan for $PM_{10}$ adopted by the State on November 17, 2004 and submitted to EPA on November 30, 2004.

(ii) [Reserved]

* * * * *

[FR Doc. 05–13554 Filed 7–11–05; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

**[RO3–OAR–2005–VA–0009; FRL–7937–5]**

### Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Virginia; Control of Municipal Waste Combustor Emissions From Small Existing Municipal Solid Waste Combustor Units

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve the Commonwealth of Virginia Department of Environmental Quality (DEQ) small municipal waste combustor plan (the plan) for implementing emission guideline (EG) requirements promulgated under the Clean Air Act (the Act). The plan establishes emission limits, monitoring, operating, and recordkeeping requirements for existing small MWC units with capacities of 35 to 250 tons per day (TPD) of municipal solid waste (MSW). An existing MWC unit is defined as one for which construction commenced on or before August 30, 1999.

**DATES:** This rule is effective September 12, 2005 without further notice, unless EPA receives adverse written comment by August 11, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number RO3–OAR–2005–VA–0009 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *http://wilkie.walter@epa.gov.*

D. Mail: RO3–OAR–2005–VA–0009, Walter Wilkie, Chief, Air Quality Analysis, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to RME ID No. RO3–OAR–2005–VA–0009. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** James B. Topsale, P.E., at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated the initial MWC unit rules, subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons per day (TPD) of municipal solid waste (MSW), consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA,* 101 F.3d 1395 (D.C. Cir. 1996), *as amended,* 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Cb and Eb were amended to apply only to MWC units with the capacity to combust more than 250 TPD of MSW per unit (i.e., large MWC units). Also, in response to the court's decision, on December 6, 2000, EPA promulgated new source performance standards (NSPS) applicable to new small MWCs (i.e., construction commenced after August 30, 1999) and EG applicable to existing small MWC units. The NSPS and EG are codified at 40 CFR part 60, subparts AAAA and BBBB, respectively. *See* 65 FR 76350 and 76378. These subparts regulate the following air pollutants: Particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

Under sections 111 and 129 of the Act, EG are not federally enforceable. However, section 129(b)(2) of the Act requires States to submit to EPA for approval State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and become federally enforceable as a section 111(d)/129 plan upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B.

As required by Section 129(b)(3) of the Act, on January 31, 2003 EPA promulgated a Federal Implementation Plan (FP) for small MWCs that commenced constructed on or before August 30, 1999. The FP is a set of maximum available control technology (MACT) requirements that implement the December 2000 MWC emission guidelines. The FP is applicable to those small existing MWC units not specifically covered by an approved State Plan under sections 111(d) and 129 of the CAA. It fills a Federal enforceability gap until State Plans are approved and ensures that the MWC units stay on track to complete, in an expeditious manner, pollution control equipment retrofits in order to meet the final statutory compliance date on or before of December 6, 2005.

## II. Review of Virginia's MWC Plan

EPA has reviewed the Virginia plan, submitted on September 2, 2003, for existing small MWC units in the context of the requirements of 40 CFR part 60, and subparts B and BBBB, as amended. State Plans must include the following essential elements: (1) Identification of legal authority, (2) identification of mechanism for implementation, (3) inventory of affected facilities, (4) emissions inventory, (5) emissions limits, (6) compliance schedules, (7) testing, monitoring, recordkeeping, and reporting, (8) public hearing records, and (9) annual state progress reports on facility compliance.

### *A. Identification of Legal Authority*

Title 40 CFR 60.26 requires the plan to demonstrate that the State has legal authority to adopt and implement the emission standards and compliance schedules. The DEQ has demonstrated that it has the legal authority to adopt and implement the emission standards governing small MWC units. DEQ's legal authority is provided in the Air Pollution Control Law of Virginia, Title 10.1, Chapter 13, of the Code of Virginia. This authority is discussed in the plan narrative and a July 1, 1998 letter from the Virginia Office of the Attorney General to the DEQ. This meets the requirements of 40 CFR 60.26.

### *B. Identification of Enforceable State Mechanisms for Implementing the Plan*

The subpart B provision at 40 CFR 60.24(a) requires that State Plans include emissions standards, defined in 40 CFR 60.21(f) as ''a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, or prescribing equipment specifications for control of air pollution emissions.'' The Commonwealth of Virginia through the DEQ, has adopted State Air Pollution Control Board Regulations (Rule 4–46 and other supporting air program rules) to control small MWC emissions. Rule 4–46, Emission Standards for Small MWC, became effective on September 10, 2003. Other applicable and effective

supporting air program rules were identified and submitted to EPA on August 11, 2003 and April 6, 2004. These rules collectively met the requirement of 40 CFR 60.24(a) to have a legally enforceable emission standard.

*C. Inventory of Affected MWC Units*

Title 40 CFR 60.25(a) requires the plan to include a complete source inventory of all affected facilities (i.e., existing MWC units with capacities of 35 to 250 TPD). The DEQ has identified three (3) affected facilities. The affected facilities are Galax, Hampton/NASA, and the Pentagon. An unknown affected facility is not exempt from applicable 111(d)/129 requirements because it is not listed in the source inventory.

*D. Inventory of Emissions From Affected MWC Units*

Title 40 CFR 60.25(a) requires that the plan include an emissions inventory that estimates emissions of the pollutant regulated by the EG. Emissions from MWC units contain organics (dioxin/furans), metals (cadmium, lead, mercury, particulate matter, opacity), and acid gases (hydrogen chloride, sulphur dioxide, and nitrogen oxides). For each affected MWC facility, the DEQ plan contains MWC unit emissions rates estimates that are given in an acceptable format. This meets the emission inventory requirements of 40 CFR 60.25(a).

*E. Emissions Limitations for MWC Units*

Title 40 CFR 60.24(c) specifies that the State plan must include emission standards that are no less stringent than the EG, except as specified in 40 CFR 60.24(f) which allows for less stringent emission limitations on a case-by-case basis if certain conditions are met. However, this exception clause is superseded by section 129(b)(2) of the Act which requires that state plans be ''at least as protective'' as the EG , in this case 40 CFR part 60, subpart BBBB. A review of the applicable Rule 4–46 emissions limitations show that all are ''at least as protective'' as those in the EG.

*F. Compliance Schedules*

Under 40 CFR 60.24(c) and (e), a state plan must include an expeditious compliance schedule that owners and operators of affected MWC units must meet in order to comply with the requirements of the plan. Also, 40 CFR 60.1535 and beginning at section 60.1585, the EG stipulate increments of progress and compliance requirements for both class I and II facilities. Final compliance and installation of air pollution control equipment capable of meeting the Rule 4–46 emission requirements must be achieved by May 6, 2005 for class II units and November 6, 2005 for class I units. Other compliance schedule requirements (*e.g.*, MWC closure) are stipulated in Rule 4–46. Class I units are those located at a MWC plant with an aggregate plant capacity greater than 250 TPD. Class II units are those located at a MWC plant with an aggregate plant capacity of 35 to 250 TPD. The Rule 4–46, 9 VAC 5–40–6710, compliance schedule provision is consistent with the FP, part 62, subpart JJJ, section 62.15045 which establishes expeditious compliance dates. The state plan meets the applicable Federal requirements.

*G. Testing, Monitoring, Recordkeeping, and Reporting Requirements*

The provisions of subpart B, 40 CFR 60.24(b) and 60.25(b), stipulate facility testing, monitoring recordkeeping and reporting requirements for state plans. Also, related EG provisions of 40 CFR 60.1715 through section 60.1930 further define subpart BBBB requirements that state plans must include. Rule 4–46 meets the subpart B requirements of 40 CFR 60.24 and 60.25; and the related subpart BBBB provisions.

*H. A Record of Public Hearing on the State Plan*

A public hearing on the plan was held June 18, 2003. Applicable portions of Rule 4–46 became effective on September 10, 2003. The state provided evidence of complying with public notice and other hearing requirements, including a record of public comments received. The DEQ has met the 40 CFR 60.23 requirement for a public hearing on the plan.

*I. Annual State Progress Reports to EPA*

The DEQ will submit to EPA on an annual basis a report which details the progress in the enforcement of the plan in accordance with 40 CFR 60.25. Accordingly, the DEQ will submit annual reports on progress in plan enforcement to EPA on an annual (calendar) basis, commencing with the first full report period after plan approval.

**III. General Information Pertaining to Section 111(d)/129 Plan Submittals From Virginia**

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized

programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its section 111(d)/129 program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

## IV. Final Action

Based upon the rationale discussed above and in further detail in the technical support document (TSD) associated with this action, EPA is approving the Virginia plan, excluding the non-applicable rule provisions, as identified in DEQ letters of August 11, 2003, April 6, 2004, and April 18, 2005 to EPA. As a result of this EPA approval action, the FP is no longer applicable. The identified exclusions, for example, include Rule 4–46 provisions relating to odors, toxic pollutants (state only requirements), and MWC operator requirements under the Virginia Board for Waste Management Facility Operators. Also, with respect to certain plan decisions, EPA retains discretionary authority for several actions as listed in the September 2, 2003 plan narrative, section J, Discretionary Authority. As provided by 40 CFR 60.28(c), any revisions to the Virginia plan or supporting regulations will not be considered part of the applicable plan until submitted by the Commonwealth of Virginia in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR Part 60, Subpart B, requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for state air pollution control agencies and existing small MWC units that are subject to the provisions of 40 CFR part 60, subparts B, and BBBB. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the section 111(d)/129 plan should relevant adverse or critical comments be filed. This rule will be effective September 12, 2005 without further notice unless EPA receives adverse comments by August 11, 2005. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

## V. Statutory and Executive Order Reviews

### *A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing section 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12,

2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, approving the Virginia section 111(d)/129 plan for small MWC units, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 62**

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: June 29, 2005.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

■ 40 CFR part 62 is amended as follows:

## PART 62—[AMENDED]

■ 1. The authority citation for Part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart VV—Virginia

■ 2. A new center heading, after § 62.11627, consisting of §§ 62.11635, 62.11636, and 62.11637 is added to read as follows:

**Emissions From Existing Small Municipal Waste Combustor (MWC) Units—Section 111(d)/129 Plan**

**§ 62.11635 Identification of plan.**

Section 111(d)/129 plan for small MWC units with capacities 35 to 250 tons per day, and the associated Virginia Air Pollution Control Board Regulations (Rule 4–46, and other supporting rules identified in the plan), submitted to EPA on September 2, 2003, including supplemental information submitted on August 11 and September 30, 2003; April 6, 2004; and April 18, 2005.

**§ 62.11636 Identification of sources.**

The affected facility to which the plan applies is each small MWC unit for which construction commenced on or before August 30, 1999.

**§ 62.11637 Effective date.**

The effective date of the plan for small MWC units is September 12, 2005.

[FR Doc. 05–13700 Filed 7–11–05; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 372

**[TRI–2004–0001; FRL–7532–6]**

**RIN 2025–AA15**

## Toxics Release Inventory Reporting Forms Modification Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** To improve reporting efficiency and effectiveness, reduce burden, and promote data reliability and consistency across Agency programs, EPA is simplifying the Toxics Release Inventory (TRI) reporting requirements. TRI reporting is required by section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). This rule simplifies the TRI reporting requirements by removing some data elements from the Form R and Form A Certification Statement (hereafter referred to as Form A) that can be obtained from other EPA information collection databases, streamlining other TRI data elements through range codes and a reduced number of reporting codes, and eliminating a few data elements from the Form R. This rule also makes two technical corrections to the regulations to provide corrected contact information and to remove an outdated description of a pollution prevention data element.

**DATES:** This rule is effective on September 12, 2005. The first reports with the revised reporting requirements will be due on or before July 1, 2006, for reporting year (*i.e.*, calendar year) 2005.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. TRI–2004–0001. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OEI Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

**FOR FURTHER INFORMATION CONTACT:** Shelley Fudge, Toxics Release Inventory Program Division, Office of Information Analysis and Access (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–0674; fax number: (202) 566–0741; e-mail address: fudge.shelley@epa.gov for specific information on this proposed rule. For more information on EPCRA section 313, contact the TRI Information Center, Toll free: (800) 424–9346, TDD: (800) 553–7672, callers in the DC area: (703) 412–9810.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does This Action Apply to Me?*

This document applies to facilities that submit annual reports under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). It specifically applies to those who submit the TRI Form R or Form A. (See *http://epa.gov/tri/report/index.htm#forms* for detailed information about EPA's TRI reporting forms.) To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

This document is also relevant to those who utilize EPA's TRI information, including State agencies, local governments, communities, environmental groups and other non-governmental organizations, as well as members of the general public.

### II. What Is EPA's Statutory Authority for Taking These Actions?

This rule is being issued under sections 313(g)(1) and 328 of EPCRA, 42 U.S.C. 11023(g)(1) and 11048; and section 6607(b) of the Pollution Prevention Act (PPA), 42 U.S.C. 13106. In general, section 313 of EPCRA and section 6607 of PPA require owners and operators of facilities in specified SIC codes that manufacture, process, or otherwise use a listed toxic chemical in amounts above specified threshold levels to report certain facility-specific information about such chemicals, including the annual releases and other waste management quantities. Section 313(g)(1) of EPCRA requires EPA to publish a uniform toxic chemical

release form for these reporting purposes, and it also prescribes, in general terms, the types of information that must be submitted on the form. In addition, Congress granted EPA broad rulemaking authority to allow the Agency to fully implement the statute. EPCRA section 328 authorizes the ''Administrator [to] prescribe such regulations as may be necessary to carry out this chapter.'' 42 U.S.C. 11048.

## III. What Is the Background and Purpose of Today's Actions?

### *A. What Are the Toxics Release Inventory Reporting Requirements and Who Do They Affect?*

Pursuant to section 313(a) of the Emergency Planning and Community Right-to-Know Act (EPCRA), certain facilities that manufacture, process, or otherwise use specified toxic chemicals in amounts above reporting threshold levels must submit annually to EPA and to designated State officials toxic chemical release reporting forms containing information specified by EPA. 42 U.S.C. 11023(a). These reports must be filed by July 1 of each year for the previous calendar year. In addition, pursuant to section 6607 of the Pollution Prevention Act (PPA), facilities reporting under section 313 of EPCRA must also report pollution prevention and waste management data, including recycling information, for such chemicals. 42 U.S.C. 13106. These reports are compiled and stored in EPA's database known as the Toxics Release Inventory (TRI).

The statute, along with regulations at 40 CFR part 372, subpart B, requires facilities that meet all of the following criteria to report:

- The facility has 10 or more full-time employee equivalents (*i.e.*, a total of 20,000 hours worked per year or greater; see 40 CFR 372.3); and
- The facility is included in Standard Industrial Classification (SIC) Codes 10 (except 1011, 1081, and 1094), 12 (except 1241), 20–39, 4911 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4931 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4939 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4953 (limited to facilities regulated under Resource Conservation Recovery Act (RCRA) Subtitle C, 42 U.S.C. 6921 *et seq.*), 5169, 5171, and 7389 (limited to facilities primarily engaged in solvents recovery services on a contract or fee basis), or, under Executive Order 13148, federal facilities regardless of their SIC code; and
- The facility manufactures (defined to include importing), processes, or otherwise uses any EPCRA section 313 (TRI) chemical in quantities greater than the established threshold for the specific chemical in the course of a calendar year.

Facilities that meet the criteria must file a Form R report or in some cases, may submit a Form A Certification Statement for each listed toxic chemical for which the criteria are met. As specified in EPCRA section 313(a), the report for any calendar year must be submitted on or before July 1 of the following year. For example, reporting year 2003 data should have been postmarked on or before July 1, 2004.

The list of toxic chemicals subject to TRI can be found at 40 CFR 372.65. This list is also published every year as Table II in the current version of the Toxic Chemical Release Inventory Reporting Forms and Instructions. The current TRI chemical list contains 582 individually-listed chemicals and 30 chemical categories.

### *B. Why Are We Modifying the Form A Certification Statement and Form R?*

EPA is modifying the TRI reporting forms to improve efficiency and effectiveness, reduce burden, and promote data reliability and consistency across Agency programs.

One of the purposes of today's actions is to reduce burden on facilities that submit annual TRI reports without compromising the data quality of toxic chemical release and other waste management information. ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. 44 U.S.C. 3502(2). That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

EPA has made considerable progress in reducing burden associated with its various information collections through streamlining, consolidating and harmonizing regulations, guidance and compliance assistance, and implementing technology-based processes (*i.e.*, electronic reporting, cross program data utilization, using geospatial information to pre-populate data fields). These measures have reduced the time, cost, and complexity of existing environmental reporting requirements, while enhancing reporting effectiveness and efficiency.

Today's actions reduce the time, cost and complexity of the reporting requirements imposed on facilities. While they are only expected to result in a modest amount of cost and burden savings, they also represent only the first phase of a broader and more substantive set of regulatory burden reduction alternatives currently being examined by EPA. That effort, described in more detail below, is expected to provide additional regulatory relief for TRI reporters.

A second purpose of today's rule is to improve data reliability and consistency across EPA programs. By replacing self-reported data from facilities with data from EPA's Facility Registry System on items such as latitude and longitude and facility ID numbers for other EPA programs, EPA can better ensure that this information is reported consistently across programs and facilities. Further, as locational information will have method of collection, accuracy, and a description of the location to which the coordinates correspond (*e.g.*, production center, discharge point), data users will be able to utilize information with greater confidence. By streamlining reporting requirements and improving data reliability and consistency, this rule will improve reporting efficiency and effectiveness.

### *C. What Led to the Development of This Rule?*

Throughout the history of the TRI program the Agency has implemented measures to improve reporting efficiency and effectiveness and reduce the TRI reporting burden on the regulated community. Through a range of compliance assistance activities, such as the Toxic Chemical Release Inventory Reporting Forms & Instructions (which is published and mailed every year), industry training workshops, chemical-specific and industry-specific guidance documents, and the EPCRA Call Center (a call hotline), the Agency has shown a commitment to enhancing the quality and consistency of reporting, and assisting those facilities that must comply with EPCRA section 313.

EPA has also done extensive work to make reporting easier for the TRI reporting community through the development and use of technology,

such as EPA's Toxics Release Inventory—Made Easy software, otherwise known as ''TRI–ME'' (*http://www.epa.gov/tri/report/trime/*). TRI–ME is an interactive, user-friendly software tool that guides facilities through the TRI reporting process. By leading prospective reporters through a series of logically-ordered questions, TRI–ME facilitates the analysis needed to determine if a facility must complete a Form R or A report for a particular chemical. For those facilities required to report, the software provides guidance for each data element on Forms R and A. TRI–ME has a one-stop guidance feature, the TRI Assistance Library, which allows keyword searches on the statutes, regulations, and many EPCRA section 313 guidance documents. TRI–ME also offers a ''load feature'' that enables the user to upload almost all of the facility's prior year data into the current year's report. Finally, TRI–ME checks the data for common errors and then prepares the forms to be sent electronically over the Internet via EPA's Central Data Exchange (CDX). TRI–ME generated reporting forms may also be submitted offline via magnetic media or on paper. In the spring of 2005, EPA distributed approximately 5,000 copies of TRI–ME in preparation for the 2004 reporting year deadline of July 1, 2005. Approximately 93% of the roughly 98,000 Form Rs filed in 2004 were prepared using the TRI–ME software.

In 1994, partially in response to petitions received from the U.S. Small Business Administration Office of Advocacy and the American Feed Industry Association, an EPA rulemaking established the Form A Certification Statement as an alternative to Form R. This burden-reducing measure was based on an alternate threshold for quantities manufactured, processed, or otherwise used by those facilities with relatively low annual reportable amounts of TRI chemicals. For non-PBT chemicals, a facility may use the Form A if the facility manufactures, processes or otherwise uses a TRI chemical below the alternate threshold of one million pounds per year and the facility has annual reportable amounts of these toxic chemicals not exceeding 500 pounds. The annual reportable amount is the total of the quantity released at the facility, the quantity treated at the facility, the quantity recovered at the facility as a result of recycle operations, the quantity combusted for the purpose of energy recovery at the facility, and the quantity transferred off-site for recycling, energy recovery, treatment, and/or disposal. This combined total corresponds to the quantity of the toxic chemicals in production-related waste (*i.e.*, the sum of sections 8.1 through and including section 8.7 on the Form R).

In an effort to further explore burden reduction opportunities, EPA conducted a TRI Stakeholder Dialogue between November 2002 and February 2004. The dialogue process focused on identifying improvements to the TRI reporting process and exploring a number of burden reduction options associated with TRI reporting. In total, EPA received approximately 770 documents as part of this stakeholder dialogue. Of that, approximately 730 were public comments and the remaining documents were either duplicates or correspondence transmitting public comments to the online docket system. The public comments expressed a range of views, with some supporting burden reduction and others opposing it. You may view and obtain copies of all documents submitted to EPA by accessing TRI docket TRI–2003–0001 online at *http://www.epa.gov/edocket* or by visiting the EPA docket reading room in Washington, DC.

As a result of the Stakeholder Dialogue, the Agency identified a number of burden reducing options which will continue to support existing data uses and statutory and regulatory obligations. These changes fall into two broad categories: (1) Changes or modifications to the reporting forms and processes (including modifications to the forms and improvements in the TRI–ME software) which will streamline reporting without significantly affecting the information collected; and (2) what the Agency believes are more substantial changes that may affect which facilities are required to report and at what level of detail.

EPA decided to address the two categories of changes through separate rulemakings, one of which is today's action. This rule focuses on streamlining reporting associated with TRI's Forms R and A. The changes resulting from today's action are the elimination of some redundant or seldom-used data elements from these forms, and modification of other data elements to reduce the time and costs required to complete and submit annual TRI reports. It also replaces some elements with information from EPA's Facility Registry System in order to improve data reliability and consistency. EPA is confident these changes will enhance the efficiency and effectiveness of the TRI program by reducing reporting requirements, while continuing to provide communities and other data users with the same, or higher quality, chemical release and other waste management information.

The second rulemaking, to be proposed later in 2005, will examine the potential for more significant reporting modifications with greater potential impact on reducing reporting burden. The options which may be considered in that rulemaking include expanding eligibility for Form A and introducing a ''no significant change'' option for chemical reports that have not changed significantly relative to a baseline reporting year. Because of the greater complexity and larger impacts potentially associated with this latter group of changes, additional analysis is needed to more thoroughly characterize its impact on TRI reporters and data users.

## IV. Summary of Today's Final Rule

EPA is removing from the TRI Forms R and A the latitude/longitude data elements (section 4.6, Part I), the EPA Identification Number(s) (RCRA ID No.) (section 4.8, Part I), the Facility NPDES Permit Number(s) (section 4.9, Part I), and the Underground Injection Well Code (UIC) ID Number(s) (section 4.10, Part I). Instead of continuing to request this information from the TRI reporter, the Agency's Facility Registry System (FRS) will be used to populate the TRI database with this information. This information will continue to be made readily available for all TRI reports and applications such as the publicly accessible TRI Explorer and all Form A or R retrievals from Envirofacts at *http://www.epa.gov/enviro/index_java.html*. In other words, facility identification and locational data will still be made available for all reporters and data users, but instead of requiring facilities to supply their geographic coordinates or provide certain EPA program identification and permit numbers, the Agency will extract this data from information that is already collected, stored and maintained in its centrally managed database, the FRS.

Based on comments received and information gathered since the proposed rule, EPA is not removing from Form R or modifying in any way, part II, section 5.3 column C as part of today's rule. Section 5.3 applies to discharges to receiving streams and water bodies. Column C requires facilities to indicate the percentage of the total quantity of the EPCRA section 313 chemicals reported in column A (Total release) that are discharged from stormwater.

As part of today's action, the Agency is, however, making modifications to five data elements of part II, section 7 of the Form R. This rule simplifies column B of section 7A—Waste

Treatment Method(s) Sequence, by replacing 64 codes used to describe the various waste treatment methods applied to EPCRA section 313 chemicals treated on-site with a modified version of the 18 hazardous waste treatment codes (H040–H129), as they were described in the proposed rule. These 18 codes are a modified version of the codes used in EPA's National Biennial Resource Conservation Recovery Act (RCRA) Hazardous Waste Report (hereafter referred to as the RCRA Biennial Report). (See PDF screen page 63 of the 2003 Hazardous Waste Report Instructions and Forms (booklet) [EPA Form 8700–13 A/B; 11/2000] available at *http://www.epa.gov/epaoswer/hazwaste/data/br03/03report.pdf*). Based on comments submitted, several modifications were made to the list of H codes presented in the proposed rule. For example, in the proposed rule EPA inadvertently omitted treatment code H083 (Air or steam stripping) from the list of 18 hazardous waste treatment codes. This was an oversight and EPA has included this code in today's rule. Furthermore, ''as the major component of treatment'' has been removed as a qualifier from H082 (Adsorption as the major component of treatment) and H083 (Air or steam stripping as the major component of treatment), ''at another site'' has been removed as a qualifier from H111 (Stabilization or chemical fixation prior to disposal at another site) and H112 (Macro-encapsulation prior to disposal at another site), and ''only'' has been removed as a qualifier from H121 (Neutralization only).

In addition, based on comment received on the proposed modification to section 7A column B, EPA has decided to retain the seven Air Emissions Treatment codes currently available for reporting in column B (see page 55 of the 2004 TRI Reporting Forms and Instructions (EPA 260–B–05–001, January 2005) at *http://epa.gov/tri/report/index.htm#forms*). Accordingly, this rule finalizes the following list of waste treatment codes for reporting in part II, section 7A, column B of Form R:

A01 Flare
A02 Condenser
A03 Scrubber
A04 Absorber
A05 Electrostatic Precipitator
A06 Mechanical Separation
A07 Other Air Emission Treatment
H040 Incineration—thermal destruction other than use as a fuel
H071 Chemical reduction with or without precipitation
H073 Cyanide destruction with or without precipitation
H075 Chemical oxidation
H076 Wet air oxidation
H077 Other chemical precipitation with or without pre-treatment
H081 Biological treatment with or without precipitation
H082 Adsorption
H083 Air or steam stripping
H101 Sludge treatment and/or dewatering
H103 Absorption
H111 Stabilization or chemical fixation prior to disposal
H112 Macro-encapsulation prior to disposal
H121 Neutralization
H122 Evaporation
H123 Settling or clarification
H124 Phase separation
H129 Other treatment

This rule eliminates section 7A, column C—Range of Influent Concentration from the Form R.

Today's action allows facilities to report their treatment efficiency as a range instead of an exact percentage in column D (Waste Treatment Efficiency Estimate) of section 7A of Form R using the following ranges:

E1 = greater than 99.9999%
E2 = greater than 99.99%, but less than or equal to 99.9999%
E3 = greater than 99%, but less than or equal to 99.99%
E4 = greater than 95%, but less than or equal to 99%
E5 = greater than 50%, but less than or equal to 95%
E6 = equal to or greater than 0% but less than or equal to 50%

This set of ranges is different from the set of ranges proposed. The ranges were modified from the proposal to allow data users to continue to distinguish the performance of combustion devices in excess of RCRA hazardous waste and TSCA PCB incinerator standards. The mid and lower range treatment efficiencies were modified as well, in response to comments to reduce the number of categories in those ranges and better reflect the distribution of historical values.

This rule eliminates column E (Based on Operating Data) of section 7A from Form R.

This rule also removes the current recycling codes for section 7C (On-Site Recycling Processes) of the Form R and replaces them with the following three reclamation and recovery management categories used in EPA's RCRA Biennial Report:

H10 Metal recovery (by retorting, smelting, or chemical or physical extraction)
H20 Solvent recovery (including distillation, evaporation, fractionation or extraction)
H39 Other recovery or reclamation for reuse (including acid regeneration or other chemical reaction process)

See the PDF screen page 63 of the 2003 Hazardous Waste Report Instructions and Forms (booklet) (EPA Form 8700–13 A/B; 11/2000) available at *http://www.epa.gov/epaoswer/hazwaste/data/br03/03report.pdf*. Readers will note that the actual code numbers differ slightly from those in the RCRA instructions in that the leading ''0'' (i.e., H*0*20 ) has been removed from each code name. This was done to avoid the need to reprogram TRI–ME, thus saving administrative costs. The Agency does not believe this will cause any confusion.

Today's action also modifies section 8.11 of Form R by removing the requirement to answer ''yes'' or ''no'' to this optional section on additional information on source reduction, recycling, or pollution control activities. Instead, an optional question will replace the requirement to answer ''yes'' or ''no'' and an optional text box feature will be added to EPA's TRI–ME reporting software to enable reporting facilities to add a brief description of their applicable source reduction, recycling, and other pollution control techniques and activities. Facilities will still have the opportunity to submit hard copies of any source reduction information they may wish to submit.

Finally, through this rule EPA is amending 40 CFR 372.85(a) to provide a reference to the TRI Web site to obtain the Form R instead of publishing in the regulations an incorrect physical address from which to request copies of TRI forms. In addition, EPA will also provide a phone number from which to request TRI publications. EPA is also deleting 40 CFR 372.85(b)(18), an outdated pollution prevention data element, which expired after the 1990 reporting year.

## V. Summary of Public Comments and EPA Responses

EPA received 31 distinctive comments in response to this proposed rule. While the majority of commenters were supportive of today's actions, many commenters cautioned the Agency to make sure that the changes do not result in diminished data quality, utility, or accessibility. Some commenters urged the Agency to consider data user needs and to balance user needs with burden reduction. A number of commenters also stated that today's actions will only provide minimal burden relief, especially since some of the changes are for information that is collected by the facility one time and used from year-to-year. Others

expressed concerns about the initial transaction costs that TRI reporters, as well as the states, may incur to account for these reporting changes and to modify training materials and analysis mechanisms already in place.

The TRI reporting form changes in today's rule support existing data uses and fulfill statutory and regulatory obligations. They are the first step in the Agency's larger effort to reduce reporting burden for TRI reporters while at the same time, these changes allow the Agency to continue to provide valuable information to the public consistent with the goals and statutory requirements of the TRI program. Some of the changes being finalized today will shift the burden to the Agency, and will increase the quality of locational data and EPA program identification information (also referred to collectively hereafter as facility identification information). Other changes being finalized today will reduce computational burden, but maintain the availability of information in a form commensurate with its true underlying precision. Accordingly, EPA does not believe there will be a meaningful loss of information for users.

While today's changes provide only a modest amount of burden relief, they are important nonetheless, and based on comments received, many TRI reporters support this burden relief measure. EPA is committed to all of its ongoing burden reduction activities. As stated in the proposed rule and above at Unit III.C., the Agency is pursuing a broader and more substantive set of regulatory burden reduction alternatives in a future rulemaking.

EPA acknowledges that changes to the TRI reporting forms could lead to some initial transition costs for TRI reporting facilities and other TRI stakeholders. Balanced against this consideration, of course, is the fact that these changes will remove certain data elements from the reporting forms and simplify others, thereby making it easier for industry to comply with the TRI reporting requirements after the changes are made. For example, whereas Form R previously required reporters to distinguish between three separate on-site wastewater treatment method codes for cyanide oxidation, the changes finalized today will allow reporters to use one cyanide oxidation treatment code. In addition, the initial burden from adjusting to the form modifications that the commenters predict will not affect new reporters.

Further, EPA's TRI–ME software can be used by reporters to greatly ease reporting burden. The software guides reporters through a series of logically ordered questions that helps them determine how to meet their regulatory obligations, and provides various tools for completing the reporting forms. The changes finalized in today's rule will be incorporated into the TRI–ME software. EPA does not require facilities or others to develop additional data collection, tracking or other databases or documentation. Neither does the Agency require any special training materials or courses as a result of today's actions.

EPA does not believe that this rule will impose significant burden on the states. Most of the changes being finalized are in the form of eliminating data elements. The Agency will continue to make all facility identification data available through the Facility Registry System (FRS). Furthermore, the Agency will continue to work with the states to improve electronic information exchange capability and the timeliness of such exchanges.

EPA's National Environmental Information Exchange Network (''Exchange Network'') provides state partners the capability to access data through a streamlined web services process. As more states participate, they will be provided with the ability to use the Exchange Network's built-in quality checks, standard file formats, and a common, user-friendly approach to exchanging data. A majority of states already take advantage of EPA's Exchange Network. In addition, we expect numerous benefits to result from the centralization of data in the Agency's FRS, which provides an integrated, comprehensive source of information about facilities subject to a variety of environmental statutes and regulations. As an essential part of implementing this rule, EPA will provide increased access to both the FRS resources and the Agency's Integrated Error Correction Process (IECP), so that states, facilities, and the general public can more easily access facility identification information and report data errors when appropriate.

Finally, some commenters raised issues about burden reduction (*e.g.*, no significant change certification criteria, expanded eligibility for Form A) that will be addressed in another rulemaking (discussed above in Unit III.C.) to be proposed later this year. Other commenters raised issues unrelated to this rulemaking (*e.g.*, providing additional context for the TRI data). These comments are included in the public docket for this rulemaking but will not be addressed in this rule.

*A. Replacement of Certain Facility Identification Data Reporting Requirements (Sections 4.6 and 4.8 Through 4.10 of Forms R and A) With Existing EPA Data From the EPA Facility Data Registry*

In the proposed rule, EPA requested comment on removing reporting of certain facility identification data (latitude/longitude coordinates and certain EPA program and permit identification numbers) from the TRI forms. Instead of collecting the data annually from facilities, EPA would use the centralized EPA database, known as the Facility Registry System (FRS), to populate the TRI database with this information. Specifically, EPA proposed populating the TRI database with latitude and longitude information (also referred to as locational data or locational information) from the FRS.

Under this proposal, locational information from FRS, including a description of what the latitude and longitude coordinates represent (*e.g.*, center of production, pipe outfall, stack) would be made readily available for all TRI search applications, such as the publicly accessible TRI Explorer and all Form R and A retrievals from Envirofacts. Similarly, as part of the proposed rule, EPA requested comment on automatically populating the TRI database with EPA program and permit identification numbers (except the TRI facility identification number (TRIFID), which facilities must continue to report annually), from FRS as an alternative to requesting the information from TRI reporters. The program and permit identification numbers that will be populated from FRS include the numbers assigned to facilities under the Resource Conservation and Recovery Act (RCRA), the permit identification numbers under the National Pollutant Discharge Elimination System (NPDES), and the permit numbers issued by a state to facilities with underground injection control wells (UIC).

As discussed in the proposed rule, the FRS is a centrally-managed database developed by EPA's Office of Environmental Information (OEI). FRS provides Internet access to a single source of comprehensive information about facilities that are subject to environmental regulations and/or have attributes that are of environmental interest to EPA. The FRS database currently contains over 1.5 million unique facility records, and new facilities are continuously being added to the system, either through information supplied by EPA programs or through our state partners on the Exchange Network. At this time, facility

identification data are exchanged with over three dozen states through the Exchange Network. FRS also receives correction and verification information from the reporting community through Web-based access, and through EPA database systems, such as TRI, maintained by over a dozen EPA programs.

Eight commenters supported removing the proposed facility identification data from Forms R and A, and instead, replacing these data elements with data from the Agency's FRS so that TRI reporters would no longer have to annually report these data elements on their Form Rs or As. Several commenters voiced support for greater consistency between EPA's program databases, as well as increased simplification and standardization of the facility identification data that EPA collects, stores and makes available to the public. One commenter asserted that this change would enhance TRI reporting efficiency and improve data quality, especially if existing databases are utilized for populating Forms R and A. Two commenters stated that these changes would ease paperwork and reporting burdens and lead to greater consistency on data collection across Agency programs. Several commenters stated that the change would help eliminate redundant data collection. One commenter stated that the change would promote wider use of the FRS. Another commenter asserted that the change should help avoid data entry errors and promote consistent reporting of facility locational data.

EPA agrees with the commenters that the Agency's databases should be standardized and made consistent as much as possible across various programs. This regulatory change is part of a larger Agency initiative to increase the reliability and accuracy of the Agency's FRS database system. Accordingly, EPA is finalizing its proposal to use FRS to supply the data for sections 4.6 and 4.8 through 4.10 of Forms R and A.

Before finalizing this proposal, however, EPA evaluated the concerns expressed about ''inherent flaws'' in the Agency's FRS that compromise the Agency's efforts to consolidate environmental data, minimize reporting redundancies and create a single identification system. Contrary to statements in the proposed rule, one commenter claimed that facility identification records in FRS are not accurate or authoritative. A commenter asserted that this understanding is supported by industry representatives who must reconcile FRS data with company records. A number of commenters emphasized that it was imperative to enable the public to easily retrieve all environmental information about a specific facility.

Commenters did not provide data to substantiate their claims of erroneous information in FRS. Nevertheless, the Agency examined FRS coverage of EPA program identifiers in the context of RCRA identification numbers (hereafter referred to as RCRA IDs) to test the commenters' concern. The FRS database contains all EPA program identification numbers that are stored in EPA's national program system databases. Regarding RCRA, FRS contains all the RCRA IDs from the RCRAInfo database, and is thus a definitive source for such information. The Agency examined over 10,000 TRI forms with RCRA IDs from the 2002 reporting year. A description of this study is included below under Unit V.A.2. of this preamble.

It is important to note here that the FRS database covers all the TRI reports for reporting year 2003 and has retained all TRIFIDs (there are over 49,000 of them) since the TRI program began in the late 1980s. FRS also has the latitude and longitude coordinates for all historical TRIFIDs. The Burden Reduction Rule will not impair the public's access to information about TRI reporting facilities, including locational data and EPA program identification numbers. These data will continue to be publicly available through various TRI access tools. Only now they will be supplied by the larger and more authoritative data files in FRS. To the extent that inconsistencies and errors are identified in the future, the Agency's Integrated Error Correction Process (IECP) will provide a convenient and effective mechanism for bringing these issues to the Agency's attention for resolution.

Two commenters asserted that ideally, EPA should refrain from relying on FRS to supply data to TRI until all states are participating in the Exchange Network and have the capability to upload data into FRS. One commenter stated that 14 states are still not active in the Exchange Network. The commenter asserted that data regarding facilities in non-participating Exchange Network states are not being scrutinized by people most familiar with those facilities. According to the commenter, until all states are part of the network, EPA lacks the ''on-the-ground'' intelligence needed to ensure that FRS data is accurate or complete.

EPA agrees that ideally all the states should be part of the existing Exchange Network. However, we believe that the commenter that urged EPA to wait to implement this rule ''until all states are participating in the FRS program'' may not have understood that FRS contains data about regulated facilities' identification information that has been provided both by EPA's many database systems and by many state environmental agencies. States do not need to take any specific action to access information data from FRS and information is available in FRS for facilities in states that aren't yet a part of the Exchange Network from various EPA sources. Anyone, including state agencies, can access data from FRS at any time. While it is true that not all states currently participate in the Exchange Network, the vast majority of states do participate, and EPA is working closely with non-participating states to help facilitate their full participation in the near future.

Accordingly, EPA does not agree that the rule should be delayed until all states are participating in the Exchange Network, nor does EPA agree that the Agency lacks the ''on-the-ground'' intelligence needed to ensure that FRS data are accurate or complete until such time. The FRS is already functioning and will be further enhanced as part of the effort to implement this rule. EPA will provide all states and other data users the opportunity to correct inaccurate TRI data. All states and reporters will be able to correct inaccurate information on locational data and EPA program identification numbers through the Agency's Integrated Error Correction Process (IECP). As explained in the proposed rule, another advantage of utilizing information in the FRS is that one can take advantage of EPA's Public Internet site to submit corrections to EPA's data on regulated facilities through one central access point. The IECP unifies the process by which EPA regulatory programs manage error notifications to the data in their systems. IECP is part of an ongoing EPA effort to improve the quality of EPA's publicly available data. Through the IECP, the public can directly notify EPA of a data error they've identified in EPA's publicly available data. They may notify EPA through a variety of venues that include the following: (1) Selecting the ''Contact Us'' hotlink from the EPA Home Page and accessing the link ''report data errors'', (2) calling the IECP desk, (3) sending a fax, or (4) e-mailing a detailed description of the error.

Furthermore, the Agency will take one additional step to ensure a smooth transition to the use of FRS. For reporting year 2004, the e-FDR is expected to be publicly released in the fall of 2005. At the time of the posting of the individual TRI reporting form

submissions (which will still contain the collected facility identification data elements), EPA will also post the facility identification information stored in FRS. This will enable interested parties to directly observe the data and confirm its accuracy. Lastly, the Agency will be working closely with all states to ensure a smooth transition to the utilization of pre-existing facility identification data in FRS.

One commenter recommended that EPA delay implementing the use of FRS to supply facility locational data and EPA program identification numbers until a pilot study is conducted to ensure that these data are of equal or higher quality in FRS than the data which are contained in the TRI database. In addition, according to the commenter, problems arise when the TRI dataset contains locational data for facilities that FRS does not cover. While having all states as part of the Exchange Network may help address these problems, the commenter asserted that there are inherent limits to this kind of after-the-fact reconciliation. The commenter urged EPA to delay implementation until the FRS dataset is complete and the agency can ensure the accuracy of the data.

While EPA does not agree that we should delay using FRS to access TRI facility identification information until a pilot study can be undertaken, a separate assessment was conducted of locational information in FRS versus that contained in the TRI database. The locational information in the two systems was compared on the basis of performance against two criteria: A quality screening approach and conformance to the Agency's data standards for locational information.

Absent very detailed site information, it is difficult to design a locational screening test. What the Agency did was to compare the locational data stored in FRS versus such data in the TRI database on a county basis (*i.e.,* what percentage of reported locational data were within the boundaries of the counties where the facilities' street addresses were located). While it is possible for a street address to vary appreciably from the location of the facility's center of production, the Agency believes this test provides a first approximation of relative performance. We found that 98% of all FRS locational data as opposed to 97% of all TRI locational data met this criterion. Therefore, on the basis of this broad measure, the two systems had comparable information.

For the second test, the Agency looked at how the data conformed with the Agency's data standards for locational information (*i.e.,* a description of the method of data collection and what is measured, as well as probable accuracy). Fully 89% of all TRI facility locational data for reporting year 2003 would have been able to meet the Agency's data standard requirements if FRS had been used to derive TRI locational data. Currently, none of the TRI locational data can meet the Agency's data standards for locational information, which require metadata for the method, accuracy and description of what the latitude and longitude coordinates represent.

Over the coming months, the Agency is implementing a program to ensure that virtually all TRI facilities will have locational information that meet the Agency's data standard requirements. An implementation plan describing this program has been included in the docket that accompanies this rule. Furthermore, through the IECP, EPA provides the opportunity to correct inaccurate data maintained for use by TRI data users.

1. *Removal of Latitude/Longitude Reporting Requirement (Section 4.6 of Forms R and A*). Three commenters recommended that reporters be provided the opportunity to review and correct the latitude/longitude data stored in EPA's FRS before removing section 4.6 from the reporting forms and replacing it with locational data from FRS. One of the commenters also recommended that EPA keep FRS locational data updated in a timely manner.

While EPA does not agree with the commenters' suggestion on waiting for facilities to review their locational data before removing part I section 4.6 from the TRI reporting forms, EPA wholeheartedly agrees with the commenters that TRI reporters should be allowed to review and correct their latitude/longitude data in FRS. We are taking a number of steps to provide this opportunity. Specifically, in the fall of 2005, at the time of the electronic facility data release (eFDR), we will be providing the relevant FRS locational information along with the responses provided by the facility for the 2004 reporting year. This will enable all interested parties, including data reporters and users to compare the information contained in the most recent TRI submission with the corresponding information for that facility in FRS.

Any interested party will have the opportunity to raise concerns with TRI-reported latitude/longitude values or the new values to be derived from FRS. These concerns may be submitted to the Agency through the IECP (discussed above). The Agency plans to improve access to the IECP to make it very easy for TRI reporters or data users to review and notify the Agency of inaccurate locational values.

One commenter cautioned EPA that the definition of ''facility'' under EPCRA is not necessarily the same as the definition of ''facility'' under other statutes, and that this could affect the use of FRS data. The commenter asserted that under EPCRA two sites that are adjacent and/or contiguous and that are owned by the same entity are considered to be one facility (even if separated by a public road). However, according to the commenter, under RCRA the sites would be considered two facilities. As such, there may be instances where the data from each source is different for the same ''facility.''

Variation in facility definitions as one crosses EPA program boundaries is one of the major challenges the Agency faces in its efforts to develop a central facility registry. However, it is a challenge which already faces some users of TRI information. For example, users of information for RCRA assessments are already faced with the challenge to create a map between multiple RCRA facilities and a single TRI facility, when the facility definitions are not consistent. Likewise, there may be cases where the TRI-reported RCRA IDs do not constitute the totality of RCRA IDs associated with a given TRIFID due to a limited number of spaces on the TRI form. Presently, crosswalk checks are completed manually.

The conversion to the use of FRS for facility identification information should actually strengthen the mapping across programs with different facility definitions. To understand why this is so, one needs to understand the meaning of a facility in FRS. In FRS, each entity with a discrete street address is an independent facility. Where individual programs will disagree is in the case of more complex facilities where ownership or programmatic considerations have led to the clustering of multiple FRS ''facilities'' into a single entity for the purposes of a program (*e.g.*, TRI).

A key step in the transition to the use of FRS supplied locational data will be the creation of a program map. This map will use the 2004 TRI responses to assign a TRI facility identification number (TRIFID) to each relevant FRS facility. Where multiple FRS facilities have the same TRIFID, all will be assigned the same TRIFID. This map will ensure that the locational information for the TRI facility contains not only all relevant locational

information, but also all relevant EPA program identification numbers. Furthermore, the locational information retrieved will be superior to current TRI information because it will have metadata describing how the information was derived, its collection method, its probable accuracy, and a geographic description (*i.e.*, whether it is based on the center of the production facility, a pipe outfall, stack, etc). This change will provide a much more comprehensive look at all of the locational information for TRI facilities. Furthermore, the enhanced access to the IECP for data suppliers and users should result in a steady improvement in facility mapping and locational information.

One commenter was troubled about how long it would take to populate FRS with TRI data and complete data quality checks. The commenter urged EPA to ensure that no lapses occur in the availability of locational data as a result of this process.

EPA will ensure that there is no lapse in making locational data available for TRI data users. Locational data from TRI and other programs is already stored in FRS and the Agency will provide a seamless transition from collecting locational data directly from TRI reporters to pulling existing locational data out of FRS and providing it along with other facility identification information to TRI data users starting with the public data release for reporting year 2005 information, which must be submitted by July 1, 2006.

Several commenters expressed concern that EPA's FRS database does not often have previously stored locational data for first-time TRI reporters. The commenter asserted that this data gap problem could also be exacerbated by the fact that not every state is participating in EPA's Exchange Network. The commenter recommended that EPA modify the rule to require reporting of locational data by first time reporters. Another commenter stated that data gaps in the FRS database could be best addressed by requiring new reporting entities to include additional information on facility identification data the first time they are required to complete Form R or A.

EPA acknowledges that there are a relatively small number of new facilities that submit TRI Form R or A reports each year for which the Agency does not already have locational data stored in FRS. The Agency disagrees, however, that new reporters should be required to submit locational data. EPA plans to use street address matching in combination with its siting tool to populate FRS with locational data for those cases in which FRS has no previous locational data for new reporters. As discussed above, reporters, as well as the states and the general public will be provided the opportunity to submit a request for correcting inaccurate facility locational data by using the Agency's IECP.

Two commenters opposed the use of address matching for deriving TRI facility latitude/longitude data. One commenter stated that the two most apparent problems with this method are: (1) If the facility is in a rural or unpopulated area, offshore, etc., then the software may be unable to match the address to a location; and (2) the facility's mailing address may not be the location where the toxic chemical releases occur. For example, if a facility picks up mail at a headquarters building that manages several facilities, this would create a different latitude/longitude than where its stacks are located.

The second commenter claimed that as much as 70% of the locational data derived from various EPA databases and stored in FRS may be based on address matching. The commenter maintained that some of the locational data in FRS may be based on wastewater outfall locations that can be long distances from the facilities. Reliance on FRS data collected from these other databases, according to the commenter, would introduce significant error into the use of the information.

The Agency disagrees with these commenters. Dealing with the second comment first, FRS does not use mailing addresses for locational referencing of facilities. Rather, the actual street address of the facility is used. EPA believes that street address matching, used in combination with our facility siting tool (*i.e.*, a geospacial application that uses aerial imagery to determine latitude and longitude coordinates) in rural areas, can provide credible locational coordinates for all TRI facilities. EPA plans to use this method for new reporters and for other cases in which no credible locational data is available in FRS. The Agency believes that this method provides a better source of data than locational data for which there is no metadata (*i.e.*, no explanation as to how the information was derived or its accuracy), which occurs with the current locational data reported to the TRI program. Furthermore, because the Agency plans to include all locational information in the next e-FDR, anyone interested in a particular facility will be able to easily raise concerns through the IECP with the data chosen to represent the location of the facility.

As to the concern with the quality of FRS, FRS has been operational since 2000 and continues to improve data quality. Many EPA programs utilize FRS and the existing IECP process is in place to facilitate receipt of suggested corrections to locational information. Despite these facts, only a very small percentage of IECP requests have involved locational updates. Further, for smaller facilities, especially those most likely to rely on street addresses, we believe an address is a reliable indicator of location.

Further, FRS will provide a complete picture of all locational information available on a facility. Because FRS provides metadata for the method, accuracy, and description of its locational data, it will be possible to know exactly the nature of the point being measured. The data user of such information will know whether they are using a point based on an outfall, a stack, or the center of the production. To the extent that a preferred location reported out of FRS is incongruent with the intended use of the TRI information, the data user may simply use another locational value for their purposes. This is a significant improvement on the current TRI locational values of unknown accuracy and relevance.

One commenter recommended that instead of removing section 4.6 from the TRI reporting forms, facilities should instead certify that the latitude and longitude data reported to TRI is obtained either from EPA's Facility Siting Tool or from a Global Positioning System (GPS) device. According to the commenter, this would ensure that facilities provide more accurate information.

The Agency does not agree with the commenters that there is an issue with the accuracy of locational information in FRS. Furthermore, we do not agree that increasing reporting burden on TRI reporters to provide locational data that is already available in FRS is an appropriate response. Transitioning to FRS use for locational information will allow users to not only have the most current locational information, but a clear indication of the method of collection, description of what is measured, and probable accuracy. They will know the reference point of the facility (*e.g.*, the street address, a stack, or some permitted portion of the facility) for which locational information is provided. Finally, use of FRS will improve the overall quality of TRI facility locational information. FRS will be continuously gathering the best locational information based on metadata for the method, accuracy and description of what the latitude and

longitude coordinates represent—including GPS-based data—as opposed to relying only on TRI-reported values of unknown precision. Furthermore, as stated in response to several previous questions, the IECP will provide yet another means for continually improving facility identification information.

2. *Removal of Reporting Requirements for EPA Permit and Program Identification Numbers (Sections 4.8, 4.9 and 4.10 of Forms R and A).* Three commenters emphasized the importance of EPA facility identification numbers to TRI data users, including various EPA program offices and the general public. One commenter cited, as an example, the use of Resource Conservation and Recovery Act (RCRA) identification numbers to calculate ''double counting'' of TRI chemical disposal transfers sent to TRI facilities that report the same chemicals again. The commenter stated that RCRA Identification numbers (RCRA IDs) allow transfers of chemicals (marked with RCRA IDs in section 6 of Form R) to be matched up with receiving TRI facilities (marked with RCRA IDs in section 4.8). The commenter also cited a 1998 report by a public interest organization to demonstrate the usefulness of collecting EPA program identification numbers in TRI. The report used the Underground Injection Control identification numbers to help analyze the completeness and accuracy of underground injection well data in EPA databases. According to the commenter, these examples are just a small sample of the many uses for this data. The commenter recommended that EPA conduct a small study to demonstrate that FRS data is of equal or higher quality to TRI's program identification data before removing these data elements from the TRI reporting forms.

EPA agrees with the commenters that the EPA program identification numbers in sections 4.8 through 4.10 of the TRI reporting forms are important and are used extensively by various EPA offices, the states, and the general public. This information will not be lost. Program identification numbers previously reported through TRI are already stored in the TRI database known as the Toxics Release Inventory System (TRIS) and will be available to data users through access tools offered by the Agency.

Nevertheless, in consideration of commenters' concerns, EPA conducted a study of RCRA IDs and concluded that FRS provided higher data quality than TRI reporting. In particular, the Agency examined over 10,000 TRI forms with RCRA IDs from the 2002 Reporting Year. These facilities were selected because they were used by the Office of Solid Waste in its annual evaluation of waste minimization progress for approximately thirty chemicals related to a Federal Government Performance and Result Act (GPRA) goal. In its evaluation, the Office of Solid Waste uses the RCRA IDs in conjunction with Form R sections 5 and 6 data to estimate the quantities of priority chemicals that may be contained in hazardous versus non-hazardous wastes. This activity is analogous to those of interest to the commenters.

Approximately 800 RCRA IDs were found in the TRI database that did not match RCRA IDs in the RCRAInfo database. Almost half of these RCRA IDs contained obvious transcription errors (i.e., ''o'' substituted for ''zero'', etc). It is not clear to what extent the remainder represent more subtle transcription errors or other factors, although it is important to note that the Office of Solid Waste maintains an active data stewardship program. On the other hand, it is also important to note that the TRI Reporting Form has only two spaces for the listing of RCRA IDs. Because of differences in facility definitions, it is quite reasonable to assume that a current TRI facility could be associated with more than two RCRA IDs. Given these factors, and the fact that FRS contains RCRA IDs assigned by EPA's RCRA program, there can be little doubt that FRS is a more definitive source of information on RCRA IDs, and that cross program coverage will be improved by conversion to the use of FRS.

We believe that the few cases in which there may be information gaps can be addressed by improving communication between EPA's Office of Environmental Information, which operates both the TRI and FRS programs, and the other Agency offices responsible for the program identification data at issue. The one possible exception to this statement relates to IDs for underground injection sites reported under the UIC program. Presently, UIC IDs are not collected on the Federal level except as a part of TRI. States maintain these records. Unfortunately, because of form limitations, TRI reporters have not necessarily provided a full listing of UIC permitted wells. EPA's Office of Information Collection is working with the Office of Ground Water and Drinking Water, however, to gather UIC information from individual states to include in FRS. It is anticipated that states will begin to provide this more complete information in 2006, in advance of the first data release to be affected by this rule.

One commenter expressed concern about a time lag in the availability of EPA program identification data if EPA removes the program identification numbers from the TRI reporting forms. The commenter cited the importance of this data to a variety of community groups across the country and urged EPA to quickly address this potential problem so the public would not experience a lag in its use of TRI Explorer.

As discussed above, the FRS already stores EPA program identification data. EPA will ensure that there is no lag in the availability of such data in TRI Explorer or Envirofacts, the two EPA data applications that TRI data users rely upon to access TRI-related data. By the time that the 2006 TRI Public Data Release (PDR) is published, all applicable FRS data will have been copied into the TRI database for publication.

One commenter asserted that the EPA program identification numbers on the TRI reporting forms are used by state environmental agencies as a cross reference for other program applications. According to the commenter, at least one state uses the data as a link to hazardous waste generator reporting, in addition to its use as a key identifier for TRI facilities. The commenter expressed concern that the proposed rule did not address how states would receive these data elements if they are not supplied with the Form R. The commenter contended that many states have developed their own data systems to manage the TRI reports filed with the state and they regard TRI reporting as a joint EPA-State partnership since facilities are required to file their forms at both the Federal and State levels. The commenter expressed concern that the data elements states need to manage their TRI data will be lost if this change is finalized.

EPA is committed to ensuring that states and TRI data users have accurate program identification numbers associated with TRIFIDs. To ensure that these data are available to states in a timely fashion after the TRI report is filed with EPA's Reporting Center, the Agency will use the Exchange Network to share data with states using the web services available through the Central Data Exchange (CDX). For states that may not yet be web-enabled, EPA will make available other electronic means to retrieve program identification numbers for the TRIFIDs of interest.

*B. Reporting Requirement for Determining the Percentage of the Total Quantity of Toxic Chemicals Contributed by Stormwater (Part II, Section 5.3 Column C)*

In the proposed rule, EPA asked for comment on removing part II, section 5.3 column C from Form R. This data element applies to discharges to receiving streams and water bodies. Column C requires facilities to indicate the percentage of the total quantity of the EPCRA section 313 chemicals reported in column A (Total release to that water body) that are discharged due to stormwater. Column C was the only part of section 5.3 affected by this proposal. Changes to the rest of part II, section 5.3 were not included in this proposal.

A number of commenters supported the removal of column C, claiming that this data element is difficult to accurately estimate. Others in favor of removing column C from Form R asserted that there does not appear to be any significant use of this data element by the public or other TRI stakeholders.

Three commenters, however, opposed removing section 5.3, column C. One commenter noted that this data element is important to understanding periodic spikes in overall water releases that may be caused by stormwater run-off. According to this commenter, directing data users to the NPDES system to obtain this information is not an adequate option because integrating data across EPA's databases is not an easy task. Further, the commenter asserted that phosphate mining stacks may be an example of a sector that is not part of the NPDES system but reports significant quantities of toxic chemicals contributed by stormwater. The commenter requested EPA to examine whether there are other sectors for which the public cannot get the same data from NPDES before eliminating this data element.

Another commenter stated that it is not uncommon for the overall water releases reported in TRI to rise or fall because of a few facilities with large releases associated with stormwater. The commenter contended that stormwater runoff often dominates such large releases, and the inclusion of this data element allows users to better understand what drives year-to-year variations in water release data, and to detect whether increases were due to production changes or rainfall. According to the commenter, if column C were to be removed TRI data users would have to cobble together information about the percentage of stormwater contribution from various EPA database sources.

Yet another commenter stated that these particular percentages have been useful to the public when making year-to-year comparisons of discharges to water. According to this commenter, these numbers can vary wildly from year-to-year, and having information about the percentage attributed to stormwater runoff, versus the amount that could be attributed to a discharge of toxic chemicals, is critical information for the public. The commenter asserted that this proposed change represents a significant loss of data.

Based on the public comments received and additional information that has recently come to light from EPA's Office of Water, the Agency now better understands how this data element is used by EPA program offices, states, communities, researchers and other TRI data users. The Agency has thus decided not to remove column C of section 5.3 from Form R. While EPA acknowledges that it may be difficult for some facilities to estimate the percentage of the total quantity of toxic chemicals contributed by stormwater, EPA believes that this data element provides important information that helps researchers, communities and other TRI data users make year-to-year comparisons of discharges of toxic chemicals to water that is unavailable elsewhere. One example of how these data are used comes from the Division of Engineering and Analysis in EPA's Office of Water, which uses this data element in its pollution control activities and the Agency's biennial report to Congress under section 304 B of the Clean Water Act.

As to the availability of this information from other sources, the commenters were again divided. There clearly are areas of non-coverage by other databases and, at a minimum, it would be difficult to pull the information together in one place to inform the public and other data users. Furthermore, even if the information could be pulled together in one place, there inevitably would be difficulties introduced by trying to harmonize TRI and NPDES release totals between two databases that may have differences in assumptions or measurement approaches. We believe the continued collection of this data element best fulfills the EPCRA reporting goals of the program and therefore, EPA will not be finalizing the proposal to eliminate column C of section 5.3, part II of the Form R.

*C. Modifications to the Reporting Requirement for On-Site Waste Treatment Methods and Efficiency and On-Site Recycling (Part II, Section 7A and Section 7C)*

As explained in the proposed rule, section 313(g)(1)(C)(iii) of EPCRA states that facilities must report ''for each wastestream, the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved.'' 42 U.S.C. 11023(g)(1)(C)(iii). Data elements collecting waste treatment information and related details, such as whether the efficiency estimate was based on operating data, were implemented through a 1988 rule. 53 FR 4516–18 (Feb. 16, 1988). For recycling activities, section 6607(b)(2) of the PPA states facilities must report ''the amount of the chemical * * * which is recycled * * * and the process of recycling used.'' 42 U.S.C. 13106(b)(2). Facilities fulfill these obligations, in part, by reporting qualitative information regarding their on-site waste treatment and recycling of EPCRA section 313 chemicals in part II, section 7 of the Form R.

In the proposed rule EPA asked for comment on the following modifications to part II, section 7 of the Form R:

(1) Simplifying column B of section 7A (Waste Treatment Method(s) Sequence) by replacing 64 codes used to describe the various waste treatment methods with a modified version of the 18 hazardous waste treatment codes currently used in EPA's RCRA Biennial Report;

(2) Eliminating column C of section 7A (Range of Influent Concentration);

(3) Simplifying column D of section 7A (Waste Treatment Efficiency Estimate) by replacing the requirement to submit an exact percentage with a range code;

(4) Eliminating column E of section 7A (Based on Operating Data); and

(5) Simplifying section 7C (On-Site Recycling Processes) by replacing 16 codes used to report particular recycling methods with 3 reclamation and recovery codes used in EPA's RCRA Biennial Report.

EPA received comment on each of these five proposed modifications. A summary of these comments and responses to them are addressed in turn in the following sections.

*1. Part II, Section 7A—On-Site Waste Treatment Methods and Efficiency (Column B—Waste Treatment Methods(s) Sequence).* EPA received a number of comments in response to the proposal to simplify column B of section 7A—Waste Treatment Method(s)

Sequence, by replacing the 64 codes (see page 55 of the 2004 Toxic Chemical Release Inventory Reporting Forms and Instructions (EPA 260–B–05–001, January 2005) at *http://epa.gov/tri/report/index.htm#forms*) used to describe the various waste treatment methods applied to EPCRA section 313 chemicals treated on-site with a modified version of the 18 hazardous waste treatment codes (H040-H129) currently used in EPA's National Biennial RCRA Hazardous Waste Report, also known as the RCRA Biennial Report. (See page 63 of the 2003 Hazardous Waste Report Instructions and Forms (booklet) [EPA Form 8700–13 A/B; 11/2000] available at *http://www.epa.gov/epaoswer/hazwaste/data/br03/03report.pdf*).

A majority of the commenters supported reducing the number of on-site waste treatment codes, claiming that this change will reduce burden for TRI reporters. Further, by making the reporting codes consistent with the RCRA Biennial Report, TRI reporting will be made easier for those facilities familiar with RCRA.

EPA agrees with the commenters that reducing the number of on-site waste treatment codes and making them more consistent with the reporting codes used in EPA's RCRA Biennial Report will result in less reporting burden for TRI reporters. The vast majority of comments submitted about this section of the proposal confirmed EPA's belief that facilities recognize and appreciate EPA's efforts to provide more consistency between its various reporting requirements and program activities. The comments also confirmed our belief that there would be no significant loss of data quality if the codes were consolidated.

One commenter supported the proposed change but cautioned that it would actually increase the burden of TRI reporting since not all facilities file RCRA Biennial Reports, and these facilities may be unfamiliar with the RCRA codes. The commenter expressed concern about those reporters who would have to familiarize themselves with the new codes and revise their TRI analysis accordingly. This commenter was also concerned that reporters that fill out both TRI annual and RCRA biennial reporting forms would still have an initial period where TRI analysis mechanisms already in place would have to be adjusted.

EPA appreciates the commenter's concern regarding those reporters unfamiliar with the reporting codes in the RCRA Biennial Report. EPA believes, however, that in the vast majority of cases, facilities will be familiar with these codes. As explained in the proposed rule, eighty percent of TRI reporters report a RCRA identification number on Form R, part I, section 4.8. The majority of facilities with an assigned RCRA identification number also file a RCRA Biennial Report. While there may be an initial period of adjustment, EPA believes that the long-term burden reduction benefits greatly surpass any short-term drawbacks. To facilitate a smooth transition, EPA will include additional information in the annual TRI reporting forms and instructions manual. The instructions will define each of the new codes, explain the few minor differences that exist between the new TRI codes and the RCRA Biennial Report codes, and describe the relationship between the old treatment codes and the new ones.

Some commenters opposed the proposal to replace the 64 waste treatment codes with the 18 codes used in the RCRA Biennial Report. One commenter recommended that EPA not use the RCRA H treatment codes and instead, use a shorter, more concise list of codes.

EPA disagrees with the commenter that a shorter list of codes should be used for section 7A column B instead of the RCRA H treatment codes. We believe that since the majority of TRI reporters also report their hazardous waste treatment methods in EPA's RCRA biennial reporting process, a consistent use of reporting codes will result in more reduced reporting burden than shortening the current TRI list of codes. During the development of the proposed rule, the Agency considered reducing the number of RCRA H treatment codes for Form R, but we decided that a slightly modified version of all 18 different RCRA H treatment codes is needed to adequately capture the various types of hazardous waste treatment methods used by facilities.

Another commenter expressed opposition to reducing the number of treatment codes, emphasizing the desire for accurate reporting rather than ''simplified'' reporting. A second commenter stated general opposition to this proposed change contending that such a change would represent a loss of data.

EPA disagrees with these commenters. No specific information or compelling examples were provided by commenters regarding potential data loss if the treatment codes in section 7A column B were reduced and made consistent with the hazardous waste treatment codes used in the Agency's RCRA Biennial Report. Rather, EPA believes that this change will improve data quality because it will prevent reporters from over-specifying their treatment trains. Consequently, EPA will replace the 64 waste treatment codes with a modified version of the 18 hazardous waste H treatment codes used in the RCRA Biennial Report (plus seven air emission treatment codes as discussed in the following paragraphs) for use in section 7A, column B of Form R.

Some commenters who were generally supportive of the proposal to use the RCRA treatment codes, raised specific concerns. For example, ten commenters expressed concerns regarding the removal of air emissions treatment codes in the proposed consolidated treatment codes for section 7A, column B. Several of these commenters recommended that the Agency retain the seven air emissions treatment codes (A01 to A07) currently used for reporting in Section 7A, column B. Many commenters stressed their concern about the lack of codes to cover the treatment of gas streams, which one commenter asserted was the primary means by which utilities reduce their toxic chemical releases, and the primary waste treatment method used at electric power plants. Another commenter stated that since the on-site treatment of acid aerosols are among the most voluminous gas streams reported in Section 8.6, it was especially important to make air emissions codes in section 7A column B available to accurately capture this type of treatment. Without specific air emission codes, they maintained that facilities would have to use the code for ''other treatment'' (H129) and this code would not provide any useful information to TRI data users.

EPA agrees with the commenters that it is important to adequately describe the treatment methods used for air emissions and gas streams. Based on the comments submitted, the Agency better understands and appreciates the necessity to include air emissions codes in section 7A column B of Form R. While EPA proposed the complete consolidation of the treatment codes in section 7A column B to make them consistent with the hazardous waste codes used in the RCRA Biennial Report, we inadvertently overlooked the fact that the RCRA codes don't cover air emissions very well. EPA agrees with the commenters that a substantial amount of valuable data would be lost if the seven existing codes for air emissions were to be removed. Consequently, this final rule retains the seven existing air emissions codes used in section 7A column B.

Several commenters questioned why EPA omitted one of the RCRA H treatment codes, H083, from the list of 18 hazardous waste treatment codes proposed for use in section 7A column B. Several of these commenters requested that EPA clarify whether this was an intentional omission.

EPA inadvertently omitted treatment code H083 from the list of 18 hazardous waste treatment method codes that were proposed to replace the existing 64 treatment codes in section 7A, column B of Form R. EPA recognizes the need to include treatment code H083 to capture air or steam stripping treatment and has included this code in the final rule.

One commenter questioned how the phrase used in a parenthetical in the proposed treatment code H083 ''(as the major component of treatment),'' would apply in sequential on-site treatment methods where the approach is simply one step in a multi-step process. The commenter noted that the same parenthetical phrase might be applied to proposed treatment code H082 as well if EPA used that code in the final rule. This commenter contended that since several of the other treatment codes proposed for use in section 7A column B did not include the parenthetical phrases used in the RCRA Biennial Report, ''(as the major component of treatment),'' should be omitted from codes H082 and H083 as well.

EPA appreciates receiving the comment requesting clarification on the use of the parenthetical phrase ''as the major component of treatment'' at the end of the treatment codes H083 and H082. EPA agrees that the use of this parenthetical may cause confusion regarding sequential on-site treatment methods where the approach is simply one step in a multi-step process. Consequently, EPA has removed the parenthetical ''as the major component of treatment'' from H083 (Air or steam stripping) and H082 (Adsorption).

A commenter requested that EPA clarify the use of the RCRA hazardous waste treatment codes H111 (stabilization or chemical fixation prior to disposal at another site) and H112 (macro-encapsulation prior to disposal at another site) in section 7A column B. The commenter noted that the use of the phrase ''at another site'' would pose a problem for TRI reporting facilities with on-site landfills, as well as for facilities that use stabilization for the final treatment of their wastes. The commenter recommended that the phrase, ''at another site'' be removed from the treatment code description in the final rule.

EPA agrees with the commenter and is removing the phrase, ''at another site'' from the description for treatment codes H111 (Stabilization or chemical fixation prior to disposal) and H112 (Macro-encapsulation prior to disposal). We agree that the use of the phrase ''at another site'' would unnecessarily restrict the use of these codes to waste intended to go off-site, and believe that the removal of this phrase will avoid confusing reporters who otherwise can use these codes to describe their on-site treatment methods.

Four commenters requested clarification of proposed treatment code H121—Neutralization only. They pointed out that the word ''only'' would eliminate the use of this code by facilities that use neutralization as one of several steps in a sequence of waste treatment methods, rather than as the single method of treatment. One commenter contended that such a restriction would force facilities that use it as one of several waste treatment method steps, to use treatment code H129—Other treatment. Two commenters requested that EPA consider removing the word ''only'' from the treatment code description for H121. Another commenter suggested that the word ''only'' is relevant to reporting under the RCRA Biennial Report and does not serve the purposes of TRI reporting.

EPA agrees with the commenters regarding the use of the word ''only'' in the description of proposed treatment code H121. We acknowledge that the word could restrict the use of that code unnecessarily and force facilities that use neutralization as one of several steps in a sequence of waste treatment methods to instead use treatment code H129—Other treatment. EPA believes that more useful information can be derived from the proper use of treatment code H121 than H129 by facilities that use neutralization as either their only treatment method or as one of several steps in their waste treatment process. The Agency has thus removed the word, ''only'' from the H121 treatment code description to be used in section 7A column B.

In accordance with all of the above, this rule finalizes the following list of waste treatment codes for reporting in part II, section 7A, column B of Form R:

A01 Flare
A02 Condenser
A03 Scrubber
A04 Absorber
A05 Electrostatic Precipitator
A06 Mechanical Separation
A07 Other Air Emission Treatment
H040 Incineration—thermal destruction other than use as a fuel
H071 Chemical reduction with or without precipitation
H073 Cyanide destruction with or without precipitation
H075 Chemical oxidation
H076 Wet air oxidation
H077 Other chemical precipitation with or without pre-treatment
H081 Biological treatment with or without precipitation
H082 Adsorption
H083 Air or steam stripping
H101 Sludge treatment and/or dewatering
H103 Absorption
H111 Stabilization or chemical fixation prior to disposal
H112 Macro-encapsulation prior to disposal
H121 Neutralization
H122 Evaporation
H123 Settling or clarification
H124 Phase separation
H129 Other treatment

*2. Part II, Section 7A—On-Site Waste Treatment Methods and Efficiency (Column C—Range of Influent Concentration).* As discussed in the proposal to eliminate section 7A, column C—Range of Influent Concentration, EPA explained that column C was implemented in the 1988 rule in which EPA initially published the Form R. 53 FR 4518. During the development of the 1988 rule, EPA believed that concentration information would assist users in determining whether effective treatment methods may be available for wastes containing different amounts of a given chemical because the effectiveness of most treatment methods is concentration-dependent. See Proposed Rule, 52 FR 21152, 21163 (June 4, 1987). Further, an indication of influent concentration would aid in the evaluation of treatment methods across industries and therefore put the data into better perspective. 53 FR 4518. As expressed in the proposal, contrary to the intended uses of this information, EPA has not identified a specific Agency use for the information in section 7A, column C and does not believe that this information is widely used by states or the public.

To date, completion of column C requires facilities to enter a numerical code, from the following list, indicating the concentration range of the EPCRA section 313 chemical as it enters the treatment step:

1 = Greater than 10,000 parts per million (1%)
2 = 100 parts per million (0.01%) to 10,000 parts per million (1%)
3 = 1 part per million (0.0001%) to 100 parts per million (0.01%)
4 = 1 part per billion to 1 part per million

5 = Less than 1 part per billion

In the proposed rule, EPA also asked for comment on whether as an alternative reporting under section 7A, column C should be optional, with facilities having a choice as to whether to report the influent concentration range of the EPCRA section 313 chemical.

Sixteen commenters expressed support for removing the range of influent concentration data element under section 7A column C. One commenter asserted that this change would provide the most significant amount of burden reduction of all the changes proposed in this rule. Several commenters stated that calculating these concentrations for each EPCRA section 313 chemical (or chemical category) in each waste stream is very time consuming and often requires numerous assumptions. One commenter asserted that facilities have spent upwards of 40 hours or more to report on this data element, reflecting the significant burden associated with this requirement.

Commenters also contended that the resulting data are of little value to the general public. One commenter stated that since certain facilities, like power plants, do not normally sample the concentrations of various process streams before treatment occurs, the reported values in column C are estimates that have little value to the general public. Commenters claimed that the removal of the range of influent concentration would not result in a significant loss to the TRI community. In response to this proposed removal of column C of section 7A, one commenter stated that data users can determine from the remaining information in section 7A that a facility has a given chemical in its influent and that it is treating that chemical with a specific treatment method to a specific percentage range of efficiency. Commenters maintained that removing this data element would not impact the usefulness of the waste treatment efficiency estimate in Column D.

Further, several commenters expressed support for entirely removing the data element rather than providing an option to report this data element. They contended that allowing for such an option would create confusion among reporters and inconsistencies in the TRI database. One commenter added that it is unlikely that facilities would provide data should the requirement to report data in Column C be made optional.

EPA agrees with the commenters that removing the data element for range of influent concentration under section 7A column C would reduce a significant amount of burden for TRI reporters. We acknowledge that a large number of facilities do not collect monitoring data and instead, provide estimates for this data element on influent concentration. The Agency also appreciates the information provided by commenters regarding whether this data element should be made optional. We agree with the commenters that such an option could create confusion among reporters, and due to the inconsistent amount of data that would be reported, we believe that it would provide information of very limited value to the public.

In the proposal, EPA stated its belief that this information is not widely used by states and the public as was anticipated when this data element was first included on Form R. EPA did not receive any comments that opposed the removal of this data element, nor any comments that provided information on the extent of its use or why the data element was important to retain. Therefore, EPA believes that its original 1988 assumptions that this information would be valuable to the public have not been substantiated and has decided to finalize the elimination of this data element.

*3. Part II, Section 7A—On-Site Waste Treatment Methods and Efficiency (Column D—Waste Treatment Efficiency Estimate).* As discussed in the proposal, the waste treatment efficiency (expressed as a percentage) reported in section 7A column D represents the percentage of the TRI chemical destroyed or removed (based on amount or mass). Under EPCRA section 313(g)(1)(C)(iii), facilities are required to submit an estimate of the treatment efficiency typically achieved by the waste treatment or disposal methods employed for each waste stream. To date, facilities are required to enter an exact percentage in this column of the form. In the proposed rule EPA asked for comment on allowing facilities to report their treatment efficiency as a range instead of an exact percentage. The Agency proposed using the following ranges in column D:

E1 = greater than 99.9%
E2 = greater than 95% to 99.9%
E3 = greater than 90% to 95%
E4 = greater than 75% to 90%
E5 = greater than 30% to 75%
E6 = 0% to 30%

This proposed set of ranges was developed by analyzing a subset of the treatment efficiencies reported in reporting year 2002. Most of the efficiencies were between 90% and 100%. The proposed range codes reflect this reporting trend by grouping three of the codes between 90% and 100% and having the other three codes represent larger ranges between 0% and 90%.

Commenters expressed general support for allowing TRI reporters to use range codes instead of a specific percentage number in section 7A column D. Several commenters claimed that a single value estimate suggests far greater certainty about removal efficiencies than exists in the real world and that it is difficult to estimate a precise percentage for the treatment efficiency of the method used by a facility. Another commenter stated that since electric utility power plants operate in a variety of different ways over the course of a year and because fossil fuels are heterogeneous, a single treatment efficiency value is nothing more than a long-term average value. One commenter contended that the use of ranges is a more reasonable approach, and covers any variance in the treatment efficiencies. The commenter added that the use of ranges would avoid the appearance of a precise estimate when the estimate was actually based on professional judgment.

EPA agrees with the commenters that allowing ranges to be reported in section 7A column D provides a more realistic estimate of on-site waste treatment efficiency. We believe that the use of ranges will provide burden relief to facilities that currently find it difficult to estimate an exact percentage due to the reasons pointed out by commenters regarding facility operations. We do not believe that this change will result in a loss of data since the data element will still consist of an estimate of the treatment efficiency typically achieved by the waste treatment or disposal methods employed for each waste stream. We believe it will instead more accurately reflect the treatment efficiency variations that occur over the course of a facility's yearly operation.

One commenter asserted that the use of range codes for treatment efficiencies would not be a labor saver since its emissions-estimating-software already calculates the overall treatment efficiencies. A second commenter stated that in order to report within one of the ranges proposed by EPA, a facility must still undergo the analysis required to obtain an exact percentage. The commenter noted that this is particularly true in the higher ranges, where most reported efficiencies fall. The commenter concluded that burden reduction would not result from this change.

EPA disagrees with these commenters that little, if any, burden would be eliminated as a result of this change.

The majority of commenters supported this change, asserting that it is difficult to derive an exact treatment efficiency percentage estimate for this data element. Even for facilities with access to sophisticated emissions-estimating software that allows faster calculations of emissions estimates, such software does not necessarily capture the uncertainty in the estimate, and even those facilities may realize a reduction in burden through the use of ranges.

One commenter asserted that the proposed change in section 7A column D could create problems with reporting in other sections of Form R. As an example, this commenter referred to problems with the use of ranges in sections 5 and 6 of Form R. According to the commenter, when the ranges in those sections are compared against the values reported in section 8 of Form R, the values do not balance (e.g., often the use of range codes will result in a ''NOTE'' error on the Facility Data Profile, because the software evidently uses the midpoint of the range).

EPA disagrees with this comment. EPA does not believe that the use of range codes in section 7A column D will affect reporting in other sections of the form, such as sections 5, 6 or 8. However, EPA will review the TRI–ME and data quality software to ensure that this change does not create errors in data processing.

Two commenters opposed the change to range codes in section 7A column D due to general concerns about the use of range codes. One of these commenters stated that the use of range codes in section 7A column D would represent a loss of data. The commenter said that range codes would also limit information without reducing the amount of time and resources a facility would need to estimate its efficiency. The second commenter stated that range codes set a bad precedent and this commenter had difficulty understanding how range codes would reduce burden since facilities would still need to calculate the general efficiency percentage in order to determine the appropriate range.

EPA disagrees with these commenters. Range reporting is already used in a variety of Form R data elements and we do not believe that applying range code reporting to this data element will set any kind of precedent that would degrade the quality of TRI data. As many commenters noted, the data reported in section 7A column D are generally based upon an estimate, rather than specific monitoring data. We believe that the use of range codes in this data element will more accurately reflect an estimated value without sacrificing data quality.

Two commenters who supported the proposed change expressed concern about the limited number of ranges provided in the high-end of the proposed ranges. They prefer that EPA either allow TRI reporters, particularly incinerators, to report a specific on-site waste treatment efficiency percentage estimate, or that EPA provide additional efficiency percentage range categories at the upper end of the range scale. These commenters claimed that this was necessary to prevent un-permitted incinerators that do not meet RCRA-mandated treatment efficiencies for some chemical wastes, to report in the highest performing efficiency range. According to these commenters, the absence of these additional upper-end range categories would result in accurate but misleading information that would be contrary to the goals of Community Right-to-Know and arguably the Data Quality Act. The commenters asserted that the absence of these additional upper-end ranges would contradict the Agency's attempt to meet the Pollution Prevention Act's goal of allowing the public to understand the ultimate destruction of toxic chemicals. Both commenters recommended that if upper ranges are used instead of allowing reporters to use specific percentages, the ranges should be changed to the following: greater than 99.9% to 99.99%, greater than 99.99% to 99.9999%, and greater than 99.9999%.

EPA appreciates receiving specific recommendations and agrees with the commenters that some adjustments should be made to the proposed upper ranges of treatment efficiency estimates for use in section 7A column D. We have used similar, although not exactly the same treatment efficiency ranges as those proposed by the commenters. The upper-level ranges that EPA used in the final rule include the following: Greater than 99% to 99.99%, greater than 99.99% to 99.9999%, and greater than 99.9999%. These ranges were selected in order to ensure an equal distribution of the range categories, and to allow data users to continue to distinguish the performance of combustion devices in excess of RCRA hazardous waste and TSCA PCB incinerator standards. EPA believes that these revised range categories will provide a means for those TRI reporters who are achieving a high degree of treatment efficiency to communicate that desirable outcome to the public. EPA does not believe that this level of specificity will diminish the burden saving associated with the use of ranges because facilities in the high-efficiency ranges will have readily-available knowledge about the efficiency of their processes since those high efficiencies are required by other programs' regulatory standards. EPA is not going to allow TRI reporters, however, to report a specific percentage amount in section 7A column D since it could result in two sets of confusing data that would be impossible to combine for any meaningful assessment.

Four commenters supported the proposed change but recommended reducing the total number of ranges used in section 7A column D. These commenters favored reducing the number of ranges in the mid-range. Three of the commenters proposed combining proposed ranges E2 (greater than 95% to 99.9%) and E3 (greater than 90% to 95%), so that there would be one category that covers greater than 90% to 99.9%. One commenter recommended changing the proposed ranges to 0 to 50%, greater than 50% to 90%, greater than 90% to 99%, and greater than 99%.

In response to the comments on modifying the ranges, in this rule EPA has reduced the number of reporting ranges for the lower and mid-ranges from four categories to two categories (greater than 0% to 50% and greater than 50% to 95%). However, the Agency cannot agree to consolidate the upper range codes. If, as the commenters suggested, the Agency consolidated greater than 90% to 99.9% into one range, over half of all respondents would be in that category. By dividing the ranges into greater than 0% to 50%, greater than 50% to 95%, and greater than 95% to 99%, the new categories will represent 18%, 20% and 29%, respectively of all responses. EPA believes these ranges provide a balance that is adequate for realizing burden reduction, while simultaneously distinguishing major differences in treatment performance.

Based on all of the above, EPA is finalizing the following ranges for use in part II, section 7A, column D:

E1 = greater than 99.9999%
E2 = greater than 99.99% but less than or equal to 99.9999%
E3 = greater than 99% but less than or equal to 99.99%
E4 = greater than 95% but less than or equal to 99%
E5 = greater than 50% but less than or equal to 95%
E6 = equal to or greater than 0% but less than or equal to 50%

4. *Part II, Section 7A—On-Site Waste Treatment Methods and Efficiency (Column E—Based on Operating Data).* As discussed in the proposed rule,

column E of section 7A requires facilities to indicate ''Yes'' or ''No'' as to whether the waste treatment efficiency reported in section 7A, column D is based on actual operating data such as the case where a facility monitors the influent and effluent wastes from this treatment step. When this data element was first implemented, EPA believed that this information would be valuable to users because it would indicate the relative quality and reliability of the efficiency estimate figure (see 52 FR 21152, 21163). EPA explained in the proposed rule that it is unaware of any significant use of this data. EPA thus proposed eliminating column E of section 7A of Form R.

Several commenters supported the removal of section 7A, column E. Two commenters stated that if the proposed changes to section 7A, columns C (Range of influent concentration) and D (Waste treatment efficiency estimate) were finalized, then the data in column E would not provide meaningful data to the public. Another commenter asserted that most of their treatment efficiencies are based on company-derived estimated efficiencies rather than on monitoring data.

EPA agrees with the commenters that section 7A, column E would not provide meaningful information to the public without specific percentage estimates in section 7A, column D. Since the proposed modification of column D to range codes is being finalized through this rule for the reasons discussed above, and because EPA did not receive any comments on the usefulness of column E data, EPA has finalized the elimination of column E.

5. *Part II, Section 7C—On-Site Recycling Processes.* As discussed in the proposed rule, facilities that conduct on-site recycling currently use sixteen codes (see page 58 of the 2004 TRI Reporting Forms and Instructions (EPA 260–B–05–001, January 2005) at *http://epa.gov/tri/report/index.htm#forms*) to report the particular recycling method(s) applied to each EPCRA section 313 chemical being recycled on-site. For each Form R filed, facilities may report up to ten ''R'' (On-site recycling) codes, as appropriate.

EPA proposed eliminating these sixteen recycling codes and replacing them with the following three reclamation and recovery management codes used in EPA's RCRA Biennial Report:

H010 Metal recovery (by retorting, smelting, or chemical or physical extraction)

H020 Solvent recovery (including distillation, evaporation, fractionation or extraction)

H039 Other recovery or reclamation for reuse (including acid regeneration or other chemical reaction process)

For further information about the RCRA reclamation and recovery management codes, see EPA's RCRA Biennial Report, which can be found at: *http://www.epa.gov/epaoswer/hazwaste/data/br03/03report.pdf.* See the PDF screen page 63 of the 80 page report.

Fourteen commenters supported reducing the number of on-site recycling codes for use in section 7C. Several commenters stated that such a change would promote consistency between the RCRA hazardous waste and TRI reporting programs. One commenter stated that this change would reduce unnecessary complexity. Several commenters expressed support for the change because they felt that the three proposed codes adequately cover the range of recycling activities that might be undertaken at a facility. In addition, the vast majority of commenters contended that the change would not compromise the utility of TRI program data.

EPA appreciates receiving comments that confirmed the Agency's belief that the use of fewer codes will simplify reporting in section 7C of Form R. Further, by making the TRI reporting process more consistent with the RCRA biennial reporting process we will facilitate even greater use of data in both the TRI and RCRA programs. Based on these comments, EPA has finalized this proposed change. However, in order to avoid software reprogramming costs, the Agency has decided to maintain a three digit numerical code for this data element, and thus, will not use the first zero in each of the three RCRA reclamation and recovery management codes. Otherwise, the codes will conform with the reclamation and recovery management codes in the RCRA Biennial Report. The codes to be used in part II, section 7C of Form R will thus be as follows:

H10 Metal recovery (by retorting, smelting, or chemical or physical extraction)

H20 Solvent recovery (including distillation, evaporation, fractionation or extraction)

H39 Other recovery or reclamation for reuse (including acid regeneration or other chemical reaction process)

*D. Removal of Reporting Data Field for Optional Submission of Additional Information (Part II, Section 8.11).*

As discussed in the proposal, section 6607(d) of the Pollution Prevention Act (PPA) requires that reporters be provided the opportunity to include ''additional information regarding source reduction, recycling, and other pollution control techniques'' with their reporting form. 42 U.S.C. 13106(d). At the present time, EPA requires each facility to answer a ''yes/no'' question to indicate whether the facility has included such information. Facilities with such information then attach a physical copy describing their activity. Because such information is long and in varied forms, it has not been coded into the TRI database. This lack of coding creates a large potential burden for users of information seeking to identify innovative programs or processes. Accordingly, EPA proposed minor changes to this data element to improve public access to such information.

As explained in the proposal, an optional text box feature would be added to EPA's TRI–ME reporting software to enable reporting facilities to submit a brief description of their applicable source reduction, recycling, and other pollution control techniques and activities. In addition, reporters would be provided with instructions in EPA's ''Toxic Chemical Release Inventory Reporting Forms'' on how to denote on their Form R submission that they are providing a brief summary and/or more detailed information on one of these activities. Form R would be modified to include a checkbox allowing facilities that provide additional information to check ''yes'' if they use the text box feature or send EPA additional information in hardcopy. Facilities that do not wish to provide additional information would no longer need to check ''no'' in section 8.11.

With this revision, EPA would make this additional information available on the Agency's public access Web site for the first time, through one of EPA's system applications, such as Envirofacts. This change would provide TRI data users with improved access to the additional information that facilities submit about their source reduction, recycling, and other pollution control techniques.

Several commenters supported the removal of the current ''yes/no'' question in section 8.11 of Form R, and the addition of an optional text box feature in EPA's TRI–ME reporting software. As one commenter stated, TRI reporters have up until now been forced to submit additional information about their source reduction, recycling, and other pollution prevention techniques separately on paper, rather than electronically. The addition of an electronic text box would allow facilities to more easily submit such

information. Another commenter remarked that such additional information was not readily accessible in the past since it was only available on paper.

EPA agrees with commenters that the removal of the current question in section 8.11 and the replacement of it with an optional electronic text box for reporting additional information about source reduction, recycling, and other pollution prevention techniques will increase the accessibility and usefulness of such information. We also believe that the use of an electronic text box, as opposed to paper submissions, will increase the likelihood that reporters will submit such information since it will be easier to do so. Accordingly, EPA has finalized this section of the proposal.

One commenter did oppose this change in 8.11, claiming that while the text box feature is optional, many reporters will feel compelled to enter information. The commenter contended that compliance issues could arise if the information submitted was not completely accurate or precise and this could result in discouraging submission of such information.

EPA disagrees with this commenter. Reporters have never been required to include additional information in section 8.11, nor would they be required to do so under this change from paper to electronic submission. In fact, under the proposed change, section 8.11 would be entirely optional since those who do not wish to include additional information would no longer need to check the ''no'' box. Instructions for using the text box will clearly state that its use is optional. While EPA does not believe that compliance issues would arise from use of the text box, the same compliance issues triggered by inaccurate information could have arisen under the current paper-only method of submission.

## VI. Technical Modifications to 40 CFR 372.85

As discussed in the proposed rule, in addition to streamlining the TRI Reporting Forms, EPA also proposed two technical corrections to 40 CFR 372.85.

Prior to 1991, EPA published the most current version of the Form R and Reporting Instructions in its regulations at 40 CFR 372.85(a). On June 26, 1991, 56 FR 29183, EPA published a final rule that replaced the full version of the form and instructions in the regulation with a Notice of Availability of the most current version of the Form R and Reporting Instructions and an address from which to obtain copies.

The address for requesting the current version of Form R is outdated. Moreover, the likelihood exists that the address may change from time to time in the future because the entity managing Form R distribution may change. Therefore, EPA is amending 40 CFR section 372.85(a) by giving a reference to the TRI Web site to obtain the Form R instead of publishing in the regulations an address from which to request copies of TRI forms. EPA is also providing a phone number from which to request TRI publications.

EPA received one comment on this section of the proposal. The commenter expressed concern that the proposed change could be misread to imply that web-based reporting is the only available reporting option.

This modification should not be construed to imply that web-based reporting will be the only reporting option. This modification simply updates the method by which a facility can obtain a copy of the TRI Forms. After a facility obtains and completes its form(s), web-based reporting can have huge potential advantages for both respondents and the Agency, allowing respondents to receive pre-populated forms and the Agency to reduce processing costs by over 90%. EPA recognizes, however, that there may be facilities that do not yet have suitable internet connectivity. Accordingly, the modification to section 372.85(a) does not require reporting by any specific method.

The 1991 rule also added a list describing the Form R data elements at 40 CFR 372.85(b). This list includes Paragraph 18, which describes a pollution prevention data element. This data element was optional and set to expire after the 1990 reporting year. After the 1991 rule was finalized, EPA incorporated mandatory pollution prevention reporting elements pursuant to the Pollution Prevention Act of 1990. 57 FR 22330. EPA believes the presence of the outdated Paragraph 18 element in the regulations is unnecessary since it has expired. Further, the Agency is concerned that its continued presence in the regulations may lead to confusion about whether pollution prevention data are required elements of the Form R. Therefore, EPA is deleting 40 CFR 372.85(b)(18) for the purposes of order and clarity. This action will not affect the reporting obligations found in section 6607 of the PPA; facilities must continue to report pollution prevention information as collected in part II, section 8 of the Form R.

## VII. Regulatory Assessment Requirements

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, 58 FR 51735, the Agency must determine whether this regulatory action is ''significant'' and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of Executive Order 12866, it has been determined that today's rule is a significant regulatory action. The Agency therefore submitted the proposed action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the docket to today's final rule.

To estimate the cost savings, incremental costs, economic impacts and benefits from this rule to affected regulated entities, EPA completed an economic analysis for this rule. Copies of this analysis (entitled ''Economic Assessment of the Burden Reduction—Modifications to Form R—final Rule'') have been placed in the TRI docket for public review.

*1. Methodology.* To estimate the cost savings, incremental costs, economic impacts and benefits of this rule, the Agency estimated both the cost and burden of completing the TRI reporting forms, as well as the number of affected entities. The Agency used the 2002 reporting year for TRI data as a basis for these estimates. First, the Agency identified the number of PBT and non-PBT respondents completing Form R and non-PBT respondents for Form A (PBT respondents are currently ineligible to use Form A). Then the Agency determined the unit burden

savings and cost savings per form using an engineering analysis. Burden savings for the various forms were calculated separately because not all final modifications appear on every form. The total burden and cost savings associated with the final modifications to Forms R and A are the product of the unit burden and cost savings per form times the number of forms (Forms R and A) submitted.

*2. Cost & Burden Savings Results.* Table 1 and Table 2 summarize the number of 2002 first and subsequent year Forms R and A submissions.

TABLE 1.—NATIONAL BURDEN AND COST SAVINGS FOR FIRST YEAR REPORTERS

| Number of 2002 forms | Form type | Burden savings per form R (hours) | Total burden savings (hours) | Cost saving per form R | Total cost savings |
|---|---|---|---|---|---|
| 458 | Form R PBT | 2.17 | 996 | $97.93 | $44,852 |
| 880 | Form R non-PBT | 1.37 | 1,203 | 61.99 | 54,554 |
| 324 | Form A non-PBT | 0.52 | 168 | 22.31 | 7,227 |
| Total | | | 2,367 | | 106,634 |

TABLE 2.—PRELIMINARY NATIONAL BURDEN AND COST SAVINGS FOR SUBSEQUENT YEAR REPORTERS

| Number of 2002 forms | Form type | Burden savings per form R (hours) | Total burden savings (hours) | Cost saving per form R | Total cost savings |
|---|---|---|---|---|---|
| 15,085 | Form R PBT | 0.78 | 11,837 | $33.67 | $507,856 |
| 65,006 | Form R non-PBT | 0.56 | 36,564 | 24.73 | 1,607,661 |
| 11,594 | Form A | 0.11 | 1,292 | 3.69 | 42,797 |
| Total | | | 49,693 | | 2,158,314 |

EPA estimates that the total annual burden savings for this rule are 52,060 hours. EPA estimates that the total annual cost savings for this rule are $2.26 million. Average annual cost savings for facilities submitting Form Rs or Form As are between $4 and $100 per form or between $12 and $300 per facility.

3. *Impacts on Data.* EPA evaluated the potential impacts on data from removing or simplifying these specific data fields and determined that the risk of significant data loss is minimal. In the case of some elements (*e.g.*, latitude and longitude information), reporting is being discontinued because information already exists or can be developed from other EPA data systems. In other cases (*e.g.*, changes in waste management or recycling reporting codes), streamlining is being proposed to bring reporting categories in line with existing practices of other Agency program offices which should ultimately increase the utility of the information. Range reporting options being considered include intervals selected to maintain relatively equal population subcategories which should maintain the utility of the data while minimizing the potential uncertainty associated with individual values. The Agency also conducted outreach to potentially affected stakeholders to solicit any specific uses of the fields being removed or simplified. Based on that outreach, the Agency believes the potential for significant data loss to the public to be minimal.

*B. Paperwork Reduction Act*

We have prepared a document estimating the recordkeeping and reporting burden savings associated with this rule. We calculate the reporting and recordkeeping burden reduction for this rule as 52,060 hours and the estimated cost savings as $2.26 million. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*C. Regulatory Flexibility Act*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has fewer than either 1000 or 100 employees per firm depending upon the firm's primary SIC code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The economic impact analysis conducted for today's rule indicates that these revisions would generally result in savings to affected entities compared to baseline requirements. The rule is not expected to result in a net cost to any affected entity. Thus, adverse impacts are not anticipated.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a

significant economic impact on a substantial number of small entities.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for the proposed and final rules with ''federal mandates'' that may result in expenditures by state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The Agency's analysis of compliance with the Unfunded Mandates Reform Act (UMRA) of 1995 found that today's rule imposes no enforceable duty on any state, local or tribal government or the private sector. This rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The rule merely streamlines reporting requirements for an existing program. Therefore, we have determined that today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled ''Federalism'' 64 FR 43255 (August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' 65 FR 67249 (November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the federal Government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.'' This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175.

*G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks*

''Protection of Children From Environmental Health Risks and Safety Risks,'' 62 FR 19885 (April 23, 1997), applies to any rule that EPA determines (1) ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potential effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not establish technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Environmental Justice*

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'', EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure

that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities.

EPA has considered the impacts of this rule on low-income populations and minority populations and concluded that it will not cause any adverse effects to these populations. As stated above, the Agency has determined that the risk of significant data loss is very low. The data elements being removed or streamlined either have a low incidence of reporting, have other data source readily available or do not appear to be used to any significant degree by the public.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 12, 2005.

**List of Subjects in 40 CFR Part 372**

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: June 30, 2005.

**Stephen L. Johnson,**

*Administrator.*

■ For the reasons discussed in the preamble, the Environmental Protection Agency 40 CFR part 372 is amended as follows:

## PART 372—[AMENDED]

■ 1. The authority citation for part 372 continues to read as follows:

**Authority:** 42 U.S.C. 11023 and 11048.

## Subpart E—[Amended]

■ 2. Section 372.85 is amended as follows:

■ i. Revise paragraph (a).

■ ii. Remove paragraph (b)(6).

■ iii. Redesignate paragraphs (b)(7) through (b)(18) as paragraphs (b)(6) through (b)(17).

■ iv. Revise the newly-designated paragraph (b)(6).

■ v. Remove the newly-designated paragraph (b)(16)(iii).

■ vi. Redesignate the newly-designated paragraphs (b)(16)(iv) and (b)(16)(v) as paragraphs (b)(16)(iii) and (b)(16)(iv).

■ vii. Revise the newly-designated paragraph (b)(16)(iii).

■ viii. Remove the newly-designated paragraph (b)(17).

**372.85 Toxic chemical release reporting form and instructions.**

(a) *Availability of reporting form and instructions.* The most current version of Form R may be found on the following EPA Program Web site, *http://www.epa.gov/tri*. Any subsequent changes to the Form R will be posted on this Web site. Submitters may also contact the TRI Program at (202) 564–9554 to obtain this information.

(b) * * *

(6) Dun and Bradstreet identification number.

* * * * *

(16) * * *

(iii) An estimate of the efficiency of the treatment, which shall be indicated by a range.

* * * * *

**§ 372.95 [Amended]**

■ 3. Section 372.95 is amended as follows:

■ i. Remove paragraphs (b)(11), (b)(13), (b)(14) and (b)(15).

■ ii. Redesignate paragraph (b)(12) as paragraph (b)(11) and redesignate paragraphs (b)(16) through (b)(17) as paragraphs (b)(12) through (b)(13).

[FR Doc. 05–13486 Filed 7–11–05; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

## Federal Motor Carrier Safety Administration

## 49 CFR Part 375

**[Docket No. FMCSA–97–2979]**

**RIN 2126–AA32**

## Transportation of Household Goods; Consumer Protection Regulations; Final Rule

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) adopts as final its interim regulations at 49 CFR part 375 published in the **Federal Register** on June 11, 2003 (68 FR 35064) and subsequent technical amendments published on March 5, 2004 (69 FR 10570), April 2, 2004 (69 FR 17313), and August 5, 2004 (69 FR 47386). The final rule specifies how motor carriers transporting household goods by commercial motor vehicle in interstate commerce must assist their individual customers who ship household goods. As no further amendments are necessary, the interim regulations at part 375 are adopted without change.

**DATES:** Effective August 11, 2005. *Petitions for Reconsideration* must be received by the agency not later than August 11, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Joy Dunlap, Acting Chief, Commercial Enforcement Division (MC–ECC), (202) 385–2428, Federal Motor Carrier Safety Administration, Suite 600, 400 Virginia Avenue, SW., Washington, DC 20024.

*Docket:* For access to the docket to read background documents or comments received on the interim final regulations and subsequent amendments, including a Record of Meeting and all correspondence referenced in this document, go to *http://dms.dot.gov* at any time or to Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477). This statement is also available at *http://dms.dot.gov.*

**SUPPLEMENTARY INFORMATION:**

### Legal Basis for the Rulemaking

The Interstate Commerce Commission Termination Act of 1995 (ICCTA) (Pub. L. 104–88, 109 Stat. 803) provides that ''[t]he Secretary may issue regulations, including regulations protecting individual shippers, in order to carry out this part with respect to the transportation of household goods by motor carriers subject to jurisdiction under subchapter 1 of chapter 135. The regulations and paperwork required of motor carriers providing transportation of household goods shall be minimized to the maximum extent feasible consistent with the protection of

individual shippers'' (49 U.S.C. 14104(a)(1)). This final rule establishes regulations governing the transportation of household goods in interstate and foreign commerce and, as such, is within the authority conferred by the ICCTA.

In the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, December 9, 1999, 113 Stat. 1749), which established FMCSA as a separate agency within the U.S. Department of Transportation (DOT), Congress authorized the agency to regulate motor carriers transporting household goods for individual shippers. Our regulations setting forth Federal requirements for movers that provide interstate transportation of household goods are found in 49 CFR part 375.

**Background**

In May 1998, the Federal Highway Administration published a notice of proposed rulemaking (NPRM) requesting comments on its proposal to update the household goods regulations (63 FR 27126, May 15, 1998). The Federal Highway Administration is the predecessor agency to FMCSA within DOT.

The public submitted more than 50 comments to the NPRM. FMCSA subsequently modified the substance of the proposal in light of concerns raised by some of the commenters, and published an interim final rule in June 2003 (68 FR 35064, June 11, 2003). We published an interim final rule rather than a final rule to complete procedures for complying with information collection requirements.

In order to publish the rule text in the October 1, 2003, edition of the Code of Federal Regulations (CFR), we established the interim final rule's effective date as September 9, 2003. However, compliance was not required until March 1, 2004. On August 25, 2003, we received two petitions for reconsideration of the interim final rule. The petitioners were (1) the American Moving and Storage Association (AMSA) and (2) United Van Lines, LLC and Mayflower Transit, LLC (UniGroup). On the same date, AMSA submitted a separate Petition for Stay of Effective Date.

On September 30, 2003, FMCSA delayed the compliance date for the rule indefinitely in order to consider fully the petitioners' concerns (68 FR 56208). In separate letters to the petitioners dated December 23, 2003, we conveyed our decision to make some of the requested changes through technical amendments to the interim final rule and to further consider others that are substantive in nature in a future rulemaking proceeding.

On March 5, 2004, FMCSA published technical amendments to the interim final rule (69 FR 10570). Some of the amendments provided uniformity between the rule text and the appendix—the consumer pamphlet *Your Rights and Responsibilities When You Move*—while others clarified certain provisions, reflected current industry practice, or corrected typographical errors. In addition, certain technical amendments revised language that was contrary to the statutory intent of the ICCTA, as codified at 49 U.S.C. 14104 and 14708.

The March 5, 2004, notice of technical amendments stated our intent to consider certain substantive amendments requested by the petitioners in a future rulemaking. As these substantive amendments involve changes to prescribed operational practices of movers, and in some cases have a direct impact on consumers, the public should be given an opportunity to comment.

On March 16, 2004, we received from AMSA a Petition for Reconsideration and Stay of the Interim Final Rule and Technical Amendments Compliance Date. In response to the petitioner's concerns, on April 2, 2004, we published clarifying technical amendments to the interim final rule, chiefly to its appendix, and established a new compliance date of May 5, 2004 (69 FR 17313, Apr. 2, 2004). However, we believe that certain amendments sought in the petition are not necessary, while others are substantive in nature and will be considered along with other potential substantive amendments in a future rulemaking proceeding. Therefore, the petition was granted in part and denied in part.

In May 2004, attorneys for both Atlas World Group, Inc. (Ms. Marian Weilert Sauvey) and Wheaton Van Lines, Inc. (Mr. James P. Reichert) contacted us concerning an incorrect statutory citation in four sections of Appendix A to part 375. Mr. Reichert also brought to our attention certain language in subpart E of Appendix A that is not fully consistent with 49 CFR 375.501(h) and 375.505(e), as amended on March 5, 2004. To correct these problems and make a few minor editorial revisions to the rule appendix, we published correcting amendments on August 5, 2004 (69 FR 47386).

**Purpose of the Household Goods Regulations**

The amended interim final rule is intended to (1) increase the public's understanding of the regulations with which movers must comply, and (2) help individual shippers and the moving industry understand the roles and responsibilities of movers, brokers, and shippers, to prevent moving disputes. Individual shippers—many of whom are either relocating for business reasons or have retired—may use for-hire truck transportation services infrequently. These consumers may be poorly informed about the regulations movers must comply with and thus have little understanding of how moving companies operate. The consumer pamphlet *Your Rights and Responsibilities When You Move*—Appendix A to part 375—is intended to help individual shippers understand the regulations so that they can make informed decisions in selecting a mover and planning a satisfactory move. Section 375.213 requires movers to furnish the information in the consumer pamphlet to prospective customers. The consumer information is posted on FMCSA's Web site at *http://www.fmcsa.dot.gov/*, where it can be downloaded and printed.

**Discussion of Public Comments**

In addition to the petitions described above, FMCSA received public comments to the interim final rule and subsequent amendments from 19 commenters. Commenting were 12 moving companies—Mayflower Transit, LLC (Mayflower), United Van Lines, LLC, and Mayflower Transit, LLC (UniGroup), Paul Arpin Van Lines (Arpin), Affiliated Movers of Oklahoma City, Inc. (Affiliated Movers), Capitol North American (Capitol), Hawkeye North American Moving and Storage (Hawkeye), Republic Van Lines of San Diego (Republic), Andy's Transfer and Storage (Andy's), Cor-O-Van Moving and Storage (Cor-O-Van), Mother Lode Van and Storage, Inc. (Mother Lode), and Atlas World Group, Inc. and Wheaton Van Lines, Inc. (through attorneys Marian Weilert Sauvey and James P. Reichert, respectively); the Georgia Department of Motor Vehicle Safety; five individuals—Staci Haag, Angie A. Chen, Kay F. Edge, Tyrone Kelly, and Tim Walker for MovingScam.com; and the American Moving and Storage Association (AMSA), which submitted one of three comments through counsel (Venable LLP). The comments are discussed below, together with FMCSA's responses on the issues addressed.

*Enforcement of the Household Goods Regulations*

The Georgia Department of Motor Vehicle Safety, while expressing support for the interim final rule,

emphasized that FMCSA should devote resources to enforcing the household goods regulations. This commenter observed: ''No amount of regulatory change will make any difference unless the FMCSA will have the personnel available to deal with consumer complaints.''

*FMCSA Response*: Recognizing the limited resources available for FMCSA's household goods program, coupled with the increasing volume of consumer complaints against moving companies, Congress increased our program funding for fiscal year 2004 and authorized seven new staff positions for household goods complaint investigation and enforcement activities. We are using these resources to expand our household goods enforcement program initiatives and activities. Our focus is on more accurately defining and analyzing the various problems related to household goods transportation, implementing improved countermeasures, and carrying out a more aggressive enforcement and compliance policy.

*Extension of Compliance Date*

Ten commenters—AMSA, UniGroup, Mother Lode, Car-O-Van, Andy's, Republic, Hawkeye, Affiliated Movers, Arpin, and North American—requested a further delay of the compliance date beyond the extension to May 5, 2004, granted in FMCSA's April 2, 2004, decision (69 FR 17313). These commenters emphasized the difficulties of implementing the new requirements at the onset of the peak moving season (May 15 through September 15). They argued that moving companies would not have time, while coping with peak-season demands, to train their employees in the proper application of the amended regulations. Several commenters added that the summer 2004 moving season was expected to be one of the busiest in many years.

Of this group, six (Mother Lode, Cor-O-Van, Andy's, Republic, Hawkeye, and Affiliated Movers) noted that as small businesses they would be particularly hard-pressed to meet the May 5, 2004, compliance date. Three others—AMSA, UniGroup, and Arpin—cited the change to the regulation governing payment for additional services (discussed below) as especially likely to cause problems if compliance with the new rules were not postponed.

In a letter of April 29, 2004, to FMCSA Administrator Annette M. Sandberg, AMSA predicted that, without a further extension of the compliance date, moving companies' inability to adequately train employees during the busy summer moving season would create service disruptions. AMSA representatives had discussed these concerns during an April 26, 2004, meeting with FMCSA staff, explaining that they expected confusion about the new rules to lead to disputes with customers (individual shippers). A record of the April 26, 2004, meeting is in the docket, along with a copy of AMSA's April 29, 2004, letter and copies of all other correspondence referenced in this document.

Two individuals (Movingscam.com and Tyrone Kelley) stated there was no need for a further extension of the compliance date. Mr. Kelley asserted that ''willful, arrogant defiance of DOT/FMCSA authority does not constitute grounds for an extension, especially since the sole beneficiaries of the extension would be the defiant ones.''

*FMCSA Response*: In her May 3, 2004, response to AMSA's April 29, 2004, correspondence, FMCSA Administrator Sandberg stated the agency would not further extend the May 5, 2004, compliance date. Ms. Sandberg noted, however, that we were not unsympathetic to the potential for service interruptions resulting from requiring full compliance with the revised regulations on May 5, 2004, and that FMCSA had worked to avoid this situation since receiving the first industry petitions in August 2003. In her letter, Ms. Sandberg indicated that to address AMSA's concerns and assist the moving industry in complying with the new rule, she was establishing the following FMCSA enforcement policy:

1. For all household goods shipments contracted before May 5, 2004, the new regulations would not be enforced. All shipments for which contracts were signed on or after May 5, 2004, would be subject to the new requirements.

2. FMCSA would delay enforcement of regulatory provisions requiring changes to forms (such as bills of lading) until July 1, 2004. This provided the industry an opportunity to produce new forms and train employees in their use.

3. The industry was required to distribute the revised consumer pamphlet *Your Rights and Responsibilities When You Move* beginning on May 5, 2004.

4. Compliance with the shipper notification requirement for an arbitration program was required by May 5, 2004.

5. Compliance with all other provisions, including the collection of transportation charges and charges for additional services, was required beginning on May 5, 2004.

This household goods enforcement policy is posted under the ''What Happens When You Move?'' link on the FMCSA Web site. To view the policy, go to *http://www.fmcsa.dot.gov/factsfigs/hhg/enforcement_policy.htm*.

In a letter to FMCSA Administrator Sandberg dated May 26, 2004, AMSA expressed disappointment that we had not delayed the May 5, 2004, compliance date. The Association added, however, that its members would ''do their best to comply with the new regulations'' during the summer 2004 moving season and ''work with FMCSA to ensure that relocating consumers experience quality moves pursuant to the requirements of FMCSA.''

*Incorrect Statutory Citation*

As noted in the Background section above, attorneys for both Atlas World Group, Inc. and Wheaton Van Lines, Inc. called to our attention an incorrect statutory citation in four sections of Appendix A to part 375, the consumer pamphlet *Your Rights and Responsibilities When You Move*. The attorneys noted that the provision under which a person may seek judicial redress for alleged loss of or damage to household goods by a carrier is at 49 U.S.C. 14706, not 49 U.S.C. 14704 as cited in the pamphlet.

*FMCSA Response:* We corrected this error in ''Transportation of Household Goods; Consumer Protection Regulations; Corrections'' (69 FR 47386, Aug. 5, 2004).

*Additional Services Requested by the Shipper*

Several commenters—Arpin, UniGroup, and AMSA (through Venable LLP)—took issue with the requirement under 49 CFR 375.403(a)(8) that the mover defer billing for additional services requested by the consumer after the shipment is in transit. These commenters believe this provision is unfair to the mover.

AMSA stated, ''As discussed in the AMSA petition, the IFR [interim final rule] will require that carrier charges for any additional service requested by a shipper or necessary to service properly a shipment cannot be collected at delivery.'' The Association observed: ''The consensus of the moving industry is that this departure from the current requirement will have at least two unfavorable consequences. It will force movers to decline to perform additional services and it will require shippers to attempt to make other arrangements to meet all of their moving requirements. Neither consequence is acceptable and the FMCSA regulations should not be the catalyst for disruptive situations of this nature.'' In its previously mentioned letter of May 26, 2004,

AMSA noted that FMCSA had stated its intention to address this issue in notice-and-comment rulemaking. It urged the agency to publish this rulemaking as soon as possible.

UniGroup asserted the ''IFR strips from carriers their most effective collection tool, i.e., a possessory lien.'' It added, ''If movers cannot collect at delivery for requested or needed additional services, it would be to the shipper's advantage, when an estimate is being presented, not to request a service, but request it later or not inform a mover of possible problems that could arise.''

Ms. Angie Chen commended FMCSA for closing the additional services ''loophole.'' Ms. Chen wrote, ''I am pleased that the interim final rules make it clear that a moving company must relinquish the goods upon payment of no more than 100% for binding estimates and 110% for non-binding estimates, with no exceptions, and that the moving company must defer collection of any legitimate additional charges over that threshold for a period of 30 days.'' (Emphasis in original) This commenter included extensive materials related to the legislative and regulatory history on this issue. She asserted these materials support her position that the additional services loophole should not be reopened.

Mayflower Transit specifically addressed Ms. Chen's letter, arguing that in light of its timing with respect to a lawsuit Ms. Chen had filed against Mayflower, her submission ''should not be considered in this matter.''

Ms. Kay F. Edge commented that some movers make a practice of holding in hostage a shipper's goods (known colloquially as ''hostage freight'') while demanding payment for additional services allegedly requested by the shipper. Regarding AMSA's request for reconsideration and stay of enforcement of the ''additional services'' provision at § 375.403(a)(8), Ms. Edge contended: ''The problem with AMSA's view is that it considers 'services requested by the shipper' to include those services the mover has unilaterally decided are necessary to get the goods off the truck and into the destination residence (such as shuttles, long carries, and the catch-all 'extra labor'). * * * Thus, according to AMSA's view of 'services requested by the shipper,' a shipper is not free to decline these additional services—even if the extra amount makes the final charges exceed 100–110% of the original estimate.''

*FMCSA Response:* We believe the issue of ''additional services'' charges deserves further consideration through additional public notice and comment. Accordingly, we plan to consider this issue fully in a more focused rulemaking proceeding in the future.

*Released Rates Valuation Statement*

As noted in the Background section, Mr. James P. Reichert, General Counsel for Wheaton Van Lines, Inc., brought to our attention certain language in subpart E of Appendix A that was not fully consistent with 49 CFR 375.501(h) and 375.505(e), as amended on March 5, 2004. The amended regulations make clear that household goods carriers have the option of placing the Surface Transportation Board's required released rates valuation statement, and any charges for optional valuation coverage, on either the order for service or the bill of lading. In the appendix (consumer pamphlet) of the interim final rule, however, subparagraph (10) of the section *Must My Mover Write Up an Order for Service?* and subparagraph (12) of *Must My Mover Write Up a Bill of Lading?* implied that the carrier must include the released rates valuation statement and any charges for valuation coverage on the order for service *as well as* on the bill of lading.

*FMCSA Response:* In the corrections notice published on August 5, 2004 (69 FR 47386), we revised subparagraph (10) of *Must My Mover Write Up an Order for Service?* by adding to the first sentence an introductory clause clarifying that the order for service must include the released rates valuation statement and any valuation coverage charges *only* if the mover has not provided them on the bill of lading. Conversely, a new introductory clause in subparagraph (12) of *Must My Mover Write Up a Bill of Lading?* makes it clear that the bill of lading must include the released rates valuation statement and any valuation coverage charges *only* if these were not provided in the order for service. These corrections ensure that the information provided to consumers is consistent with amended §§ 375.501(h) and 375.505(e).

## Rulemaking Analyses and Notices

### Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and the U.S. Department of Transportation regulatory policies and procedures (44 FR 11034, Feb. 26, 1979) because there is substantial public interest in the interstate transportation of household goods and related consumer protection regulations. FMCSA estimates that the first-year discounted costs to the industry of this rulemaking equal $14.6 million, while total discounted costs are estimated at $42.8 million over the 10-year analysis period. As such, the costs of this final rule do not exceed the $100 million annual threshold as defined in Executive Order 12866.

FMCSA's full Regulatory Impact Analysis explaining in detail how we estimated cost impacts of the final rule is in the docket. The Regulatory Impact Analysis is summarized below.

This final rule adopts the interim final regulations published in the **Federal Register** on June 11, 2003, governing the interstate transportation of household goods (68 FR 35064) and subsequent technical amendments published on March 5, 2004 (69 FR 10570), April 2, 2004 (69 FR 17313), and August 5, 2004 (69 FR 47386). These new regulations specify how motor carriers transporting household goods by commercial motor vehicle in interstate commerce must assist their individual customers who ship household goods. They revise, clarify, and augment the existing regulations governing matters such as when a mover is required to have an arbitration program, how notification of additional services proposed by the mover must be made, presentation of freight bills, collection of charges, and liability disclosure requirements. In addition, Appendix A to part 375—the consumer pamphlet *Your Rights and Responsibilities When You Move*—has been extensively revised. These changes to the appendix ensure uniformity with the rule text and increase the accuracy and clarity of the information provided to individual shippers.

FMCSA estimates these regulatory changes will produce five primary cost impacts on household goods carriers, as follows: (1) Costs of training certain employees on the proper application of the regulatory changes; (2) costs to revise carrier marketing materials, forms, and bills of lading, including technical writing and printing costs associated with incorporating in marketing materials the consumer information in the *Your Rights and Responsibilities When You Move* pamphlet (Appendix A to part 375); (3) costs to update online documentation and/or redesign carrier Web pages to incorporate new or revised information about the regulatory requirements; (4) additional paperwork costs associated with the new regulations; and (5) costs associated with deferred collection of ''additional services'' payments, which the new regulations prohibit carriers from collecting at delivery. FMCSA's estimates of the costs in these five impact areas are summarized below.

*1. Training Costs*

The 1997 Economic Census [1] indicates there are currently 8,279 motor carriers of ''Used Household and Office Goods Moving'' (NAICS Code 484210). These motor carriers employ a total of 121,550 workers (or almost 15 employees per firm). Since the Economic Census makes no distinction between intrastate and interstate household goods movers, we adjusted these totals to include only those household goods carriers operating in interstate commerce. According to our Licensing and Insurance (L&I) database of active interstate, for-hire carriers, there are currently 4,000 active motor carriers engaged in the movement of household goods in interstate commerce. The ratio of carriers identified in the L&I database to the number identified in the Economic Census (8,279) is 48.3 percent (or 4,000 divided by 8,279). Multiplying 48.3 percent by the 121,550 employees of household goods firms identified in the Economic Census, we estimated the 4,000 household goods carriers currently operating in interstate commerce employ 58,700 workers.

For purposes of this analysis, we assumed that, on average, approximately 50 percent of each employer's workforce will be trained in the new regulations (backroom employees would not require training). Therefore, of the estimated 58,700 workers employed by interstate household goods carriers, approximately 29,350 (or 50 percent) will receive new training as a result of these regulations. Based on information from FMCSA Household Goods Program staff, we estimated each of the 29,350 household goods employees will require, on average, four hours of new training.

At an April 26, 2004, meeting with FMCSA staff, AMSA representatives noted the need to ''train agents, sales personnel and drivers.'' (See FMCSA's Record of Meeting in the docket.) In a May 26, 2004, letter to FMCSA Administrator Annette M. Sandberg, AMSA reiterated that ''thousands of sales personnel, drivers and management personnel'' would need training in the new regulations. This information helped us to estimate the per-hour cost of training, using hourly wage information from the publication *Occupational and Employment Wages* (May 2003) produced by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). The median hourly wage estimates used in our analysis are shown in Table 1.

TABLE 1.—OCCUPATION AND MEDIAN HOURLY WAGE DATA FOR EMPLOYEES REQUIRING TRAINING AS A RESULT OF THIS FINAL RULE

| Occupation | Median hourly wage |
|---|---|
| Sales Representatives, Wholesale and Manufacturing, Except Technical and Scientific Products | $21.09 |
| First-line Managers of Non-retail Sales Workers | 26.78 |
| Truck Drivers, Heavy & Tractor-Trailer | 16.01 |
| Average (Simple) of Above-Median Hourly Wages | 21.29 |

Source: Occupational Employment and Wages, May 2003, U.S. Department of Labor, Bureau of Labor Statistics (BLS).

On the assumption that sales, driver, and management personnel will be trained in equal numbers, we calculated a simple average of the hourly wage rates shown in the table. This yielded an average hourly direct wage rate of $21.29. The addition of an estimated 31 percent to cover the cost of fringe benefits (a weighted average of the fringe benefits for private and for-hire carriers, based on data from the American Trucking Associations and BLS) brings total compensation to $27.89 per hour. This average hourly wage rate represents the ''opportunity cost'' to household goods movers. The opportunity cost constitutes the overall losses business sustain by pulling workers away from economically productive tasks to train them in the application of the new rules.

To the opportunity cost we added an estimate of the direct costs of training. Based on data from truck driver training schools, we estimated a direct cost of $25 per hour. This yielded an hourly training cost of $52.89. We multiplied the 29,350 employees requiring training by the $52.89 hourly cost to derive an estimated $1.55 million in costs for each hour of training for all affected employees. Multiplying this result by four (or the average number of training hours required per employee) yields a total first-year cost of training equal to $6.2 million (undiscounted). Using a ½-year discounting method and a seven-percent discount rate as recommended by the Office of Management and Budget (OMB) in its guidelines for regulatory analyses (OMB Circular A–4) [2], first-year discounted costs of training equal $6.0 million.

Based on information AMSA provided both during its April 26, 2004, meeting with FMCSA and in its April 29, 2004, letter to Administrator Sandberg, we assumed this training cost will be a one-time cost to employers. Any future training would be at the discretion of the employer and not a direct result of this regulation.

*2. Costs To Revise and Reprint Forms, Bills of Lading, and Marketing Materials*

It is our understanding that many household goods carriers, particularly the larger moving companies, develop their own marketing materials, forms, and/or bills of lading. Forms and bills of lading must be consistent with the new regulatory requirements, while FMCSA also requires that carrier marketing materials incorporate the information in the *Your Rights and Responsibilities When You Move* consumer pamphlet. Therefore, carriers will incur costs in updating and reprinting these forms and materials. (Carriers without proprietary marketing materials may download and print the consumer pamphlet from FMCSA's Web site at *http://www.fmcsa.dot.gov/.* These carriers will incur minimal costs in providing customers with the revised pamphlet.) We estimated an average cost of $5.00 to revise and reprint each packet of materials (containing the marketing pamphlet(s), forms, and/or bill of lading); this includes costs for

[1] The Economic Census is published by the U.S. Bureau of the Census. Copies may be found at *http://www.census.gov/epcd/www/econ97.html.*

[2] OMB Circular A–4 (September 17, 2003) provides guidance to Federal agencies on the development of regulatory analyses as required under Section 6(a)(3)(C) of Executive Order 12866, ''Regulatory Planning and Review.'' For a copy, see *http://www.whitehouse.gov/omb/inforeg/circular_a4.pdf.*

design, layout, and review, plus additional charges for printing the cover and for specifications such as high gloss. Using estimates from the FMCSA information collection approved by OMB for the interim final rule (see the Paperwork Reduction Act section below), we assumed the population of 4,000 interstate household goods carriers conducts 600,000 interstate moves annually. Multiplying the estimated $5.00 printing cost per marketing item by 600,000 yields first-year printing costs of $3.0 million (undiscounted). Using a ½-year discounting method and a 7 percent discount rate, we calculated first-year discounted costs of reprinted marketing materials as $2.9 million.

Many household goods carriers may use in-house technical writers to convert FMCSA regulations to layperson's language. Using wage information in the BLS May 2003 *Occupational and Employment Wages* report, we estimated the fully loaded median wage for technical writers (including fringe benefits) at $32.49 per hour. Assuming each technical writer requires 8 hours to rewrite the new rules, we derived a total technical writing cost of $260 per carrier. Multiplied by the population of 4,000 interstate household goods carriers, this yields total first-year costs of $1.04 million (undiscounted). Using a ½-year discounting method and a 7 percent discount rate, we calculated first-year discounted costs of rewriting marketing materials as $1.0 million.

In the aggregate, first-year discounted costs to motor carriers to rewrite and print marketing materials equal $3.9 million (after rounding). Again, we assumed this to be a one-time cost.

*3. Online Documentation and Web Page Redesign Costs*

An unpublished research study by the Volpe Center for FMCSA in calendar year 2000 indicated that 70 percent of existing motor carriers had direct access to the Internet and used that access for business purposes.[3] On the assumption that Web site usage for commercial purposes is likely approaching 100 percent, we believe the 4,000 interstate household goods carriers probably maintain Web sites for commercial purposes that contain information of interest to individual shippers.

To estimate the costs of updating household goods carriers' Web site content to reflect the new rules, we used the median wage for a computer support specialist (a category including Web site designer) of $18.96 per hour (from the BLS May 2003 *Occupational and Employment Wages* report). Applying a fringe benefits factor of 31 percent, we derived a fully loaded rate for a Web site designer of $24.84 per hour. On the assumption that Web site design work is performed by third-party contractors, we applied a factor of 100 percent to the fully loaded direct wage rate to account for third-party profit, overhead, and other administrative expenses associated with standard contractor fees. This yielded an hourly wage rate of $49.68.

We assumed that in-house technical writing costs (already incorporated in section 2 of this summary, *Costs To Revise and Reprint Forms, Bills of Lading, and Marketing Materials*) include costs for rewriting any documents and forms the carrier publishes online. Consequently, in estimating the present costs we focused strictly on information upload and Web site redesign. Based on discussions with FMCSA information systems staff, we estimated each site designer requires about 2 hours to update a carrier's Web site with the new information. Therefore, the total cost per carrier to update Web site information is estimated at $99.36 (or $49.68 per hour times 2 hours). Multiplying this per-firm cost by the 4,000 interstate household goods carriers yields a total first-year cost of $397,440 (undiscounted). Using a ½-year discounting method and a 7 percent discount rate, we calculated first-year discounted costs for Web updating and redesign as equal to $384,000. As with technical writing and printing costs, we assumed this is a one-time cost.

*4. Paperwork Costs*

The paperwork burden associated with this rule entails a permanent change in recordkeeping practices of household goods carrier personnel for the foreseeable future. Thus, unlike the costs for training personnel, revising and reprinting marketing materials, and redesigning carrier Web sites, this paperwork burden imposes recurring costs on the industry. The paperwork burden estimates provided by FMCSA to OMB in 2003 as part of the Supporting Statement to the June 11, 2003, interim final rule (see the Paperwork Reduction Act section below) estimated the new burden hours at 1,232,000 hours annually, with an accompanying annual cost of $2.61 million (undiscounted) to the 4,000 motor carriers engaged in interstate household goods movement. This total cost is primarily from the new paperwork burden associated with motor carriers' management of arbitration programs and non-binding estimates. Additionally, paperwork costs under each category are broken out by capital costs and operational/maintenance costs. The source material for estimating the paperwork burden hours and cost estimates was obtained from national averages developed by the Association of Records Managers and Administrators (ARMA).[4] Given the detail with which the paperwork-related costs were developed, FMCSA analysts adopted these cost figures for its Regulatory Impact Analysis.

First-year costs associated with this requirement equal $2.5 million (using a ½-year discounting method and a 7 percent discount rate). Recurring costs associated with paperwork burden in years 2 through 10 of the analysis period total $16.4 million (discounted using a 7 percent discount rate). When later-year, recurring paperwork-related costs ($16.4 million) are added to first-year costs ($2.5 million), the result is 10-year discounted costs of $19.0 million (after rounding).

*5. Costs To Collect Payment for Additional Services*

Under 49 CFR 375.403(a)(7) and (a)(8) and 375.405(a)(9) and (a)(10), a mover must wait 30 days after delivery to collect fees for additional services required to complete the move or provided at the shipper's request, and not included in the estimate (whether binding or non-binding). These are termed ''additional services'' charges. FMCSA believes that additional services charges would seldom exceed 20 percent of the estimated value of the move, as the shipper and carrier typically discuss such services before the carrier provides the estimate. Multiplying the average cost of a household goods move in 2003 ($3,900, based on a range of $3,800 to $4,000 as reported by AMSA), we estimated average ''additional services'' fees of $780 per binding estimate. If the carrier provided a non-binding estimate, however, the additional services charges would equal only 10 percent of the shipment value (or $390 for the average shipment) since the current regulations permit carriers to collect 110 percent of a non-binding estimate at delivery. Based on figures FMCSA used to estimate paperwork burden costs for the interim final rule, we assumed

[3] ''Internet Accessibility to Commercial Motor Vehicle Operators and Carriers,'' an unpublished report by the Volpe National Transportation Systems Center for the Federal Motor Carrier Safety Administration, 2000.

[4] ''Cost Indicators for Selected Records Management Activities (A Guide to Unit Costing for the Records Manager—Volume 1)'' (1993) by Griffiths, Jose-Marie, Ph.D. and King, Donald W.

household goods carriers provide binding estimates 60 percent of the time, with the remaining 40 percent of shipments moving under non-binding estimates. Therefore, the average value of additional services for which carriers must defer billing is estimated at $624, or ($780 × 60%) + ($390 × 40%).

For this analysis, we assumed that the shipper contests additional services charges 5 percent of the time, or in 30,000 of the 600,000 annual interstate household goods moves. We believe this assumption is reasonable, given that the amended ''additional services'' provision is aimed at the relatively small segment (20 percent) of annual interstate household goods moves that are transacted directly between the mover and shipper, rather than at the remaining 80 percent contracted through an employer (governmental or private sector) or other commercial entity. Therefore, the total estimated value of the portion of ''additional services'' charges contested by the shipper is equal to $18.7 million (30,000 shipments × $624). An AMSA marketing survey reported that, for large household goods carriers, a contested charge eventually had to be written off as bad debt in 10 percent of cases. This means the average annual amount of unrecovered charges for large carriers is equal to $1.87 million ($18.7 million × 10 percent). Using a ½-year discounting method and a 7 percent discount rate, we calculated first-year costs of this provision as equal to $1.81 million. These costs are assumed to recur throughout the 10-year analysis period, resulting in a total discounted cost of $13.6 million.

*Total Costs*

Total first-year, discounted costs associated with this final rule equal $14.6 million (the sum of all cost figures for each compliance cost item). Total discounted costs associated with this final rule over the 10-year analysis period equal $42.8 million.

*Benefits*

The agency was unable to quantify the benefits of this rule. While we identified categories of benefits, none of these categories is amenable to quantification. For example, we expect individual shippers with loss or damage claims to expend less time and effort in paperwork associated with recovering their losses, because the clear instructions in household goods carriers' revised forms and informational materials will direct them to the appropriate venue and forms. However, FMCSA does not have access to information regarding how much time consumers currently waste in searching for the correct venue and forms. What can be said with certainty is that putting more information in the hands of consumers cannot increase their out-of-pocket costs. Clearly, all household goods shippers will benefit from knowing the rules and remedies governing household goods transportation and from knowing what levels of service to expect.

In addition to increasing the transparency of the household goods regulations, this final rule ensures consumers are better protected against unfair practices and financial harm. This brings individual shippers increased peace of mind. Although important, ''peace of mind'' benefits are difficult to quantify in a meaningful and objective manner. Nevertheless, we expect these benefits to be substantial.

This rule is not intended to address motor carrier safety issues, and would not impact the number of truck-related crashes.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies, as a part of each rulemaking, to consider regulatory alternatives that minimize the impact on small entities while achieving the objectives of the rulemaking. FMCSA has evaluated the effects of this rule on small entities as required by the RFA. We have determined this regulatory action will have a significant economic impact on a substantial number of small entities. Therefore, we have prepared the following Regulatory Flexibility Analysis.

The Regulatory Flexibility Analysis covers the following topics: (1) A description of the reasons why the agency is taking this regulatory action; (2) a succinct statement of the objectives of, and legal basis for, the rule; (3) a description of and, where feasible, an estimate of the number of small entities to which the rule will apply; (4) a description of the reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) significant alternatives considered that accomplish the stated objectives and minimize the impact on small entities; and (6) an identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the rule.

1. *A description of the reasons why the agency is taking this regulatory action.*

FMCSA is amending its regulations governing the interstate transportation of household goods so that individuals who ship their personal effects may better understand their rights. Additionally, several regulatory changes were made to improve the balance between the rights of household goods movers and those of individual shippers (consumers). Such amendments will allow the shipper to make more informed decisions in selecting a mover and ensuring the mover conducts the delivery of goods in a satisfactory fashion.

2. *A succinct statement of the objectives of, and legal basis for, the rule.*

In the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106–159, December 9, 1999, 113 Stat. 1749), Congress authorized FMCSA to regulate household goods carriers engaged in interstate operations for individual shippers. The objectives of today's final rule are to clarify the existing regulations and balance more equitably the rights of the individual shipper with those of the mover. This will enable consumers to make more informed decisions in selecting a mover and ensuring the delivery of goods is conducted in a satisfactory fashion.

3. *A description of and, where feasible, an estimate of the number of small entities to which the rule will apply.*

This regulation will apply to all motor carriers transporting household goods in interstate commerce. According to FMCSA's Licensing and Information (L&I) database, approximately 4,000 such carriers are currently in operation. Total discounted costs of the final rule are estimated at $42.8 million. Spreading the total discounted costs evenly over the 10-year analysis period yields average annual discounted costs of $5.9 million. Dividing this figure by the 4,000 affected firms yields an average compliance cost of $1,475 per firm. We anticipate the compliance costs of large firms will be higher than this average, while those incurred by small firms will be lower. This is because many of these costs (such as for training and printing) increase with the number of workers the firm employs and/or the number of household goods shipments it handles. Since this cost differential is not expected to be substantial, however, we will use the average compliance cost of $1,475 per firm for the purposes of this Regulatory Flexibility Analysis.

The 1997 Economic Census indicated a total of 8,279 firms operating in the ''Used Household and Office Goods Moving'' segment, or North American Industrial Classification System (NAICS) Code 484210. Of these, 6,764 firms (or 81 percent) had average annual receipts or revenues of less than $21.5 million. However, the Economic Census makes no distinction between firms operating in interstate and intrastate commerce. The agency's L&I database indicates that approximately 4,000 of these firms currently operate in interstate commerce. Therefore, for the purposes of this analysis, 81 percent of the 4,000 interstate household goods carriers, or 3,246 carriers, are considered small entities affected by this regulation.

According to the 1997 Economic Census, NAICS Code 484210, there are 1,177 firms with average annual revenues of less than $100,000, where average annual pre-tax profits are equal to $3,042 per firm. Average annual compliance costs of $1,475 per firm comprise 48.5 percent of these firms' average annual pre-tax profits, which we consider a significant impact. Additionally, there are 1,764 firms with $100,000 to $249,999 in average annual revenues, where average annual pre-tax profits are equal to $9,018. Average annual compliance costs of $1,475 per firm comprise 16.4 percent of these firms' average annual pre-tax profits, which we consider a significant impact. Firms with average annual revenues above $250,000 per year will not be significantly impacted by this rule, given that the compliance costs are less than 7 percent of these firms' average annual pre-tax profits. Therefore, according to the Economic Census data, a total of 2,941 small firms (or 1,177 + 1,764) will be significantly impacted by implementation of this rule. As noted earlier, the Economic Census makes no distinction between carriers operating in interstate and intrastate commerce. Thus, we adjusted downward the number of small firms calculated above to include only those entities operating in interstate commerce. Since the 4,000 household goods carriers currently operating in interstate commerce constitute 48.3 percent of the total population of 8,279 household goods carriers, we derived this lower figure by calculating 48.3 percent of 2,941 (the number of small firms significantly impacted according to the Economic Census), or 1,421 small interstate household goods carriers that will be significantly impacted by this regulation.

These 1,421 small entities represent a substantial segment of motor carriers currently hauling household goods in interstate commerce: 36 percent of all such carriers (4,000 firms), and 44 percent of small interstate household goods carriers (3,246 firms).

4. *A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.*

This rule will result in additional information collection, retention, and dissemination by household goods carriers. For instance, the regulations will require motor carriers to: (1) Have written agreements with their prime agents stipulating that each advertisement by a motor carrier or its agent include the name or trade name of the originating-service motor carrier and its USDOT number; (2) establish and maintain a procedure for responding to complaints from shippers; (3) develop a concise summary of the carrier's arbitration procedures; and (4) update the consumer pamphlet *Your Rights and Responsibilities When You Move* to incorporate the new requirements. All these changes (and several others not listed above) will assist consumers in their commercial dealings with interstate household goods carriers, by enabling them to make better informed decisions about contracts with, and services to be ordered, executed, and settled with, the carriers. Approximately 3,246 small entities (interstate household goods carriers) will be subject to this regulation. While knowledge of household goods industry operations is required to explain the new information to consumers, no special skills or training are required to prepare or report on this information.

5. *Significant alternatives considered that accomplish the stated objectives and minimize the impact on small entities.*

This rulemaking effort is a direct result of the conclusions reached by the Government Accountability Office (GAO) in its 2001 report entitled ''Consumer Protection: Federal Actions Are Needed to Improve Oversight of the Household Goods Moving Industry,'' No. GAO–01–318. Section 209 of the MCSIA directed that GAO study the effectiveness of DOT's consumer protection activities regarding the interstate household goods moving industry and identify alternative approaches for providing consumer protection. The GAO report recommended FMCSA: (1) Study alternative dispute mechanisms required by the ICCTA; (2) evaluate the adequacy of agency enforcement efforts; (3) determine whether legislative changes are needed to supplement Departmental efforts, including authorizing the States to enforce Federal statutes and regulations and amending the Federal statute limiting carrier liability with respect to interstate shipments of household goods; and (4) conduct public education efforts to promote consumer awareness of self-help measures.

FMCSA has acted on each of the GAO report recommendations. Our assessment of the agency's enforcement sufficiency and effectiveness led, as noted above under *Discussion of Public Comments*, to the hiring of seven additional enforcement staff in fiscal year 2004. We also implemented revised operating procedures for conducting investigations of household goods movers, and developed a comprehensive Household Goods Compliance and Enforcement Training course for safety investigators.

We have proposed and supported enforcement enhancements through legislative provisions under consideration in both the House and Senate. These include providing State agencies with expanded authority to enforce Federal regulations, increasing enforcement sanctions against rogue moving companies, and other provisions to bolster consumer protection against unscrupulous household goods transportation practices.

We are expanding our public education efforts. These include developing and implementing a comprehensive household goods education and outreach initiative, aimed primarily at individual shippers but also targeting carriers and brokers, consumer advocacy groups, and law enforcement agencies. We also recently completed a major revision and improvement of the FMCSA household goods Web site and the National Consumers Complaint database.

Finally, we are conducting an Alternative Dispute Mechanism Assessment focused on arbitration procedures and programs.

We believe these efforts are reinforcing the consumer protections provided in the regulations adopted as final in today's action. This final rule remains the centerpiece of FMCSA's household goods enforcement program, as it is the most effective way to provide consumers with enhanced protections without unduly impeding market competition within the moving industry.

6. *An identification, to the extent practicable, of all relevant Federal rules*

*that may duplicate, overlap, or conflict with the rule.*

In the agency's view, no Federal rules would duplicate, overlap, or conflict with this final rule.

**Executive Order 13132 (Federalism)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, Aug. 10, 1999). State Attorneys General submitted comments to the May 2, 1998, NPRM, which were considered and addressed in developing the interim final regulation. FMCSA certifies that this rule has federalism implications because it directly impacts the distribution of power and responsibilities among the various levels of government. The rule will not, however, impose significant additional costs or burdens on the States.

*Federalism Summary Impact Statement*

The FMCSA Position Supporting the Need To Issue This Regulation

The State Attorneys General generally believe they hold authority to enforce laws and regulations governing the interstate transportation of household goods and want FMCSA to acknowledge their role. However, the interstate transportation of household goods involves issues that are national in scope and that have been regulated exclusively by the Federal Government for many years. Regulations implementing the Household Goods Transportation Act of 1980 were promulgated by the ICC in 1981 and subsequently transferred to DOT by the ICC Termination Act of 1995 wherein Congress, in 49 U.S.C. 14104, conferred authority on the Secretary of Transportation to ''issue regulations * * * protecting individual shippers.'' The Secretary subsequently delegated this authority to FMCSA under 49 CFR 1.73(a)(6). The Carmack Amendment, now codified at 49 U.S.C. 14706, imposes a uniform regime of mover liability for interstate shipments of property designed to eliminate the uncertainty resulting from potentially conflicting State laws. Federal and State courts consistently have held that Carmack preempts a broad range of State consumer protection laws potentially applicable to interstate household goods carriers. As with the former ICC regulation amended by the interim final rule, under current case law this rule preempts all State regulations that purport to regulate interstate household goods transportation subject to Federal jurisdiction.

As AMSA commented, the NPRM's conclusion that this rule is not intended to preempt any State law or regulation was incorrect and likely to promote uncertainty and potential conflicts with States. AMSA stated, ''In promulgating these regulations FHWA has expressly preempted application of any State law that would impact the services required to perform interstate transportation of household goods. States, for example, may not regulate the manner in which household goods carriers are required by FHWA to execute orders for service nor may they enforce any State regulation that would affect any other aspect of the interstate moving service performed by household goods carriers regulated by FHWA. *See, e.g., Fidelity Federal S. & L. Assn.* v. *de la Cuesta*, 458 U.S. 141, 73 L.Ed.2d 664 (1982) (Even where Congress has not completely displaced State regulation in a specific area, State law is nullified to the extent that it actually conflicts with Federal law. Federal regulations have no less pre-emptive effect than Federal statutes.)

''FHWA authority to issue the proposed regulations is without question. As the NPRM notes, in enacting section 14104 of the Termination Act, the enabling statute in this proceeding, Congress conferred authority on the Secretary to 'issue regulations protecting individual shippers.' That is precisely what the Secretary proposes and his action in doing so preempts all State regulations that would purport to regulate the same activities. For these reasons, the cited sentence should be removed or clarified in the final decision in this proceeding. In a similar vein, it is appropriate at this point to address certain comments of NACAA [National Association of Consumer Agency Administrators]. NACAA urges that the proposed regulations should announce that they are supplementary law only and that violations will also subject movers to remedies provided by other Federal, State and local laws, such as State deceptive trade practices laws. (Comments, p. 7). This suggestion reflects a fundamental misconception of the Supremacy Clause, U.S. Constitution, Art. VI, clause 2, and Federal preemption. There is not the slightest suggestion in the law or its precedent that Congress ever intended this explicit and comprehensive regulatory scheme to be supplemental to or superseded by any State law or regulation. Congress could not have been clearer in expressing its intent to occupy the field of interstate household goods transportation regulation. AMSA asserts the NACAA's contention is flatly wrong.''

FMCSA agrees that AMSA has correctly stated current case law on the preemption issue. AMSA is likewise correct that NACAA's suggestion to consider the Federal rules solely as supplementary law reflects a basic misconception of the Supremacy Clause.

Prior Consultations With State and Local Officials

As AMSA pointed out, the NPRM's conclusion that this rule is not intended to preempt any State law or regulation was incorrect. Thus, the requirement in section 6(c) to consult ''with State and local officials early in the process of developing the proposed regulation,'' in accordance with OMB guidance to send letters to State and local officials or their regional or national representative organizations such as the National Association of Governors, did not occur. The agency did, however, receive comments to the docket from State and local officials.

Summary of the Nature of State and Local Officials' Concerns

State officials recommended that the rules incorporate additional consumer protection provisions, including: (1) More comprehensive disclosure requirements, particularly with respect to insurance and mover liability; (2) stronger arbitration requirements; (3) uniform rules governing cash-on-delivery service, including requiring movers to relinquish possession of a shipment upon payment of an amount substantially less than the amount of the estimate; (4) requiring movers to offer guaranteed delivery prices if requested by the shipper; (5) restricting billing for additional services not contained in the estimate; (6) establishing a 3-day grace period allowing a shipper to rescind an order for service without penalty; (7) permitting the shipper to deduct penalties for late deliveries from the transportation charges; (8) relaxing limitations on a shipper's right to file loss and damage claims, including claims for loss and damage occurring during storage-in-transit; and (9) prohibiting demands for payment until the entire shipment is delivered.

Statement of the Extent to Which FMCSA Has Addressed the Concerns of State and Local Officials

In response to these comments to the NPRM, the agency amended the proposed regulations in five respects. The interim final rule (and today's final rule): (1) Revises the consumer information pamphlet that movers must

give shippers to include guidance regarding the shipper's right to decline arbitration; (2) clarifies mover liability disclosure requirements; (3) requires movers to disclose the names and addresses, when known, of any other motor carriers that will participate in transportation of the shipment; (4) requires movers to make delivery (relinquish the shipment) and defer demanding payment for charges not in the estimate, if the mover could reasonably have determined such charges at the time of pickup; and (5) mandates a 3-day grace period for shippers to cancel orders for service without penalty.

Conclusion

FMCSA submitted State and local officials' comments to the docket and the federalism summary impact statement for the June 11, 2003, interim final rule to the Director of the Office of Management and Budget.

**Unfunded Mandates Reform Act of 1995**

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120 million or more (adjusted annually for inflation) in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. FMCSA determined that the changes in the June 11, 2003, interim final rule will not have an impact of $120 million or more (as adjusted for inflation) in any one year. No significant additional impact is associated with today's adoption of the interim final regulations as a final rule.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. FMCSA sought approval of the information collection requirements in the ''Transportation of Household Goods; Consumer Protection Regulations'' interim final rule published on June 11, 2003. On June 19, 2003, OMB assigned control number 2126–0025 to this information collection, and the approval expires on June 30, 2006.

OMB approved 600,000 annual responses, 4,370,037 annual burden hours, and an annual information collection burden of $37,247,000. It also approved FMCSA form number MCSA–2P to be used as part of the information collection process.

The collected information encompasses that which is generated, maintained, retained, disclosed, and provided to, or for, the agency under 49 CFR part 375. It will assist individual household goods shippers in their commercial dealings with interstate household goods carriers, thereby providing a desirable consumer protection service. The collection of information will be used by prospective household goods shippers to make informed decisions about contracts and services to be ordered, executed, and settled within the interstate household goods carrier industry. These information collection items were required by regulations issued by the former ICC. When these items transferred from the ICC to FMCSA, however, no OMB control number was assigned to cover this information collection transfer. It was therefore necessary to calculate the old information collection burden hours for these items approved under the ICC rules versus the new burden generated by the interim final rule and subsequent amendments and adopted in today's final rule.

Assumptions used for calculation of the information collection burden include the following: (1) There are currently approximately 4,000 active household goods carriers, up from the 2,000 estimated in the 1998 NPRM; (2) an estimated 75 new household goods carriers will start up business each year; (3) over the next 3 years, two large van lines will start up business; and (4) the requirement for an arbitration report proposed in the NPRM was not retained in the interim final rule.

The following table summarizes the information collection burden hours by correlating the information collection activities with the sections of part 375 in which they appear. (The total annual burden hours of 4,370,037 represent a 441,090-hour decrease from the 4,811,127 burden hours estimated in the NPRM.) The table shows whether each information collection activity was required under ICC regulations. A detailed analysis of the burden hours can be found in the OMB Supporting Statement for this rule. The Supporting Statement and its attachments are in the docket.

| Type of burden | Proposed section | Hourly burden | New burden? |
|---|---|---|---|
| Agency Agreements | 375.205 | 19 | No. |
| Minimum Advertising Information Soliciting Prospective Individual Shippers | 375.207 | 684 | No. |
| Complaint and Inquiry Handling | 375.209 | 500,000 | No. |
| Arbitration Program Summary | 375.211 | 8,000 | Yes. |
| Your Rights and Responsibilities When You Move Booklet | 375.213 | 8,334 | No. |
| Selling Insurance Policies | 375.303 | 100,000 | No. |
| Estimates—Binding | 375.401 | 1,836,000 | No. |
| Estimates—Non-binding | 375.401 | 1,224,000 | Yes. |
| Orders for Service | 375.501 | 300,000 | No. |
| Inventory | 375.503 | *0 | Yes. |
| Bills of Lading | 375.505 | 300,000 | No. |
| Volume to Weight Conversions | 375.507 | 4,000 | No. |
| Weight Tickets | 375.519 | 42,000 | No. |
| Notifications of Reasonable Dispatch Service Delays | 375.605 | 16,000 | No. |
| Delivery More Than 24 Hrs. Ahead of Time | 375.607 | 1,000 | No. |
| Notification of Storage-in-Transit Liability Assignments | 375.609 | 30,000 | No. |
| ''Old'' Burden Hours | ..... | 3,138,037 | |
| ''New'' Burden Hours | ..... | 1,232,000 | |

| Type of burden | Proposed section | Hourly burden | New burden? |
|---|---|---|---|
| Total Burden Hours for Information Collection | | 4,370,037 | |

*Making inventories is a usual and customary moving industry practice that FMCSA adopted on June 11, 2003, at the suggestion of the National Association of Consumer Agency Administrators (NACAA) and the American Moving and Storage Association (AMSA). The PRA regulations at 5 CFR 1320.3(b)(2) allow FMCSA to calculate no burden when the agency demonstrates to OMB that the activity needed to comply with the specific regulation is usual and customary. The supporting statement in the docket demonstrates that moving industry drivers usually and customarily write inventories before loading shipments, although drivers have not been required by law to do so before the May 5, 2004, compliance date for the interim final regulations.

**National Environmental Policy Act**

The agency has analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). We have determined under our environmental procedures Order 5610.1, published March 1, 2004, that this action is categorically excluded (CE) under Appendix 2, paragraph 6.m. of the Order from further environmental documentation. This CE relates to regulations implementing procedures applicable to the ''operations,'' including specified business practices, of motor carriers engaged in the transportation of household goods. In addition, the agency believes that the action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, we believe the action does not require an environmental assessment or an environmental impact statement.

We have also analyzed this action under section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. We have preliminarily determined that approval of this action would be exempt from the CAA's General Conformity requirement since it is merely an adoption of an existing interim final rule as a final rule. See 40 CFR 93.153(c)(2). We believe that it will not result in any emissions increase, nor will it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, we believe it is reasonably foreseeable that the rule will not increase total commercial motor vehicle mileage, change the routing of commercial motor vehicles, change how commercial motor vehicles operate, or change the commercial motor vehicle fleet-mix of motor carriers. This rule merely revises and clarifies certain requirements for interstate household goods carriers to ensure individual shippers of household goods are better protected against unfair practices and financial harm. It also ensures these individual shippers are better informed about the new regulations.

**Executive Order 12630 (Taking of Private Property)**

This rule will not effect a taking of private property or otherwise have takings implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

**Executive Order 13211 (Energy Supply, Distribution, or Use)**

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because as a procedural action it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

**Executive Order 12988 (Civil Justice Reform)**

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**List of Subjects in 49 CFR Part 375**

Advertising, Arbitration, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

**Final Rule**

The interim regulations published June 11, 2003, at 68 FR 35064, part 375 of Title 49 of the Code of Federal Regulations, are adopted as amended without further revision. For the current version of part 375, you may refer to the electronic Code of Federal Regulations on the Internet at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=6480bc2da610cfedac650114c5e44fef&rgn=div5&view=text&node=49:4.1.2.2.17&idno=49.* The technical amendments published on March 5, 2004 (69 FR 10570) clarified certain provisions, sought to provide full uniformity between the rule text and the appendix, and ensured the rule reflects current industry practice. The clarifying technical amendments published on April 2, 2004 (69 FR 17313) chiefly affected the rule appendix. The appendix was further corrected on August 5, 2004 (69 FR 47386).

Issued on: July 6, 2005.

**Annette M. Sandberg,**

*Administrator.*

[FR Doc. 05–13608 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 571

**[Docket No. NHTSA–2003–15712]**

**RIN 2127–AJ43**

## Federal Motor Vehicle Safety Standards; Glazing Materials

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule; response to petitions for reconsideration; correction.

**SUMMARY:** NHTSA published a final rule in July 2003 that updated the Federal motor vehicle safety standard on glazing materials. The agency received several petitions for reconsideration of the rule, and has published documents that have delayed the rule's effective date. Today's document completes the response to the petitions by amending provisions on shade band requirements; by providing a compliance option to certain aftermarket glazing materials; by delaying the compliance date of the rule for motor vehicle manufacturers by two months so that they can deplete glazing

inventories; and by correcting several provisions of the rule.

**DATES:** This final rule becomes effective August 11, 2005. The date on which vehicle manufacturers and manufacturers of slide-in campers and pickup covers designed to carry persons while in motion must comply with the final rule published on July 25, 2003 (68 FR 43964), as amended on September 26, 2003 (68 FR 55544), January 5, 2004 (69 FR 279) and on August 18, 2004 (69 FR 51188), is delayed until November 1, 2006. Any petitions for reconsideration of today's final rule must be received by NHTSA not later than August 26, 2005.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Ms. Lori Summers, Office of Crashworthiness Standards, at (202) 366–1740, facsimile (202) 366–7002, or Mr. Patrick Boyd, Office of Crash Avoidance Standards, at (202) 366–6346, facsimile (202) 493–7002.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel, at (202) 366–2992, facsimile (202) 366–3820.

You may send mail to any of these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

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## I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials,* specifies performance requirements for glazing installed in motor vehicles. It also specifies the vehicle locations in which the various types of glazing may be installed. On July 25, 2003 (68 FR 43964)(Docket No. NHTSA–2003–15712), NHTSA published a final rule (July 2003 final rule [1]) updating FMVSS No. 205 by incorporating by reference the 1996 version of the industry standard, American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways, hereinafter referred to as ''ANSI/SAE Z26.1–1996''. Prior to the July 2003 final rule, FMVSS No. 205 referenced the 1977 version of ANSI Standard Z26.1 and the 1980 supplement to that standard. By incorporating by reference ANSI/SAE Z26.1–1996, the agency was able to remove most of the existing text in FMVSS No. 205 and thus simplified the glazing standard.

In addition to incorporating ANSI/SAE Z26.1–1996, the final rule addressed several issues not covered by that standard. Among other matters, the final rule limited the size of the shade band located at the top of the windshield and interpreted the meaning of the term ''the most difficult part or pattern'' for the fracture test in ANSI/SAE Z26.1–1996. The agency received petitions for reconsideration on several aspects of the final rule, including the date on which compliance with the amended requirements would become mandatory, the shade band requirements and the regulatory text the agency used in interpreting ''the most difficult part or pattern'' term.

In partial response to issues raised in the petitions, NHTSA delayed the compliance date of the July 2003 final rule from January 22, 2004 to September 1, 2006 in final rules published at 68 FR 55544 (September 26, 2003), 69 FR 279 (January 5, 2004), and 69 FR 51188 (August 18, 2004). Today's document responds to the remaining issues raised by the petitions for reconsideration of the July 2003 final rule. The main remaining issues pertain to the requirements for shade bands, and the text used in the standard concerning the fracture test of ANSI/SAE Z26.1–1996.[2]

## II. Shade Bands

### *a. Background*

ANSI/SAE Z26.1 requires most passenger car windows to pass a light transmittance test that assures that windows transmit 70 percent of the incident light. However, the standard permits parts of a piece of vehicle glazing that are not needed for driving visibility to be tinted more darkly. The most familiar location for those more darkly tinted areas is the top several inches of the windshield. This area is typically called a ''shade band.'' [3]

Prior to the July 2003 final rule, the size of the shade band was not explicitly defined by Standard No. 205. Even ANSI/SAE Z26.1–1996 did not set boundaries for how much of an area the shade band may occupy. This raised NHTSA's concern that, hypothetically, a shade band with the proper markings could cover most of a driver's field of view through the windshield and still comply with ANSI/SAE Z26.1–1996, even though for proper driving visibility the windshield should be clear (*i.e.*, meet the 70 percent light transmittance requirement of FMVSS No. 205). NHTSA sought to set a requirement that established boundaries for shade bands to limit their potential encroachment on the driver's field of view.

The August 1999 NPRM set about accomplishing this by proposing to incorporate into FMVSS No. 205 an industry recommended practice developed by the Society of Automotive Engineers (SAE) that established boundaries for shade bands. This recommended practice, ''Class 'A' Vehicle Glazing Shade Bands—SAE J100 June 1995,'' is based on the eyellipse of a 95th percentile male. The eyellipse is a statistical representation of the 95th percentile male driver's eye positions in a vehicle. The eyellipse of a 95th percentile male is specified because tall drivers are more likely than short drivers to have their line of vision at least partially blocked by a shade band. The lower boundary for the shade band, as seen in side view, is a line tangent to the upper edge of the 95th eyellipse, and inclined 5 degrees up from the horizontal. (This inclined angle is referred to as the ''up-angle'' of 5 degrees.) The NPRM requested comment on the appropriateness of SAE J100 and on whether there were other, alternative

[1] See also 68 FR 55544, 69 FR 279, and 69 FR 51188, discussed below, which delayed the effective date of the rule and made other amendments.

[2] Several of the petitions for reconsideration raised concerns about interpretation letters issued by NHTSA on November 26, 2002 and July 25, 2003 to Mr. Larry Costa, concerning whether the fracture test is to be conducted with soldered terminals attached to the glazing. This issue was not raised or discussed in this rulemaking in either the August 4, 1999 NPRM or the July 25, 2003 final rule, and thus is outside the scope of this rulemaking and will not be addressed in this document.

[3] Since we need to be able, for the purposes of compliance testing, to differentiate between those areas of a window that are intended to meet the 70 percent transmittance requirement and those areas that are not so intended, the limit of the shade band needs to be marked on the glazing. Section 7 of ANSI Z26.1–1996 requires that if an area of glazing intentionally made with a luminous transmittance less than 70 percent adjoins an area that has 70 percent or more luminous transmittance, the former area must be permanently marked at the edge to show the limits of the area that are supposed to comply with the test. The markings have a line parallel to the edge of the tinted area, and an arrow perpendicular to that line showing the item number of the glazing in the direction of the arrow. This mark is called the ''AS–1 line.''

industry standards that the agency should consider (64 FR at 42333).

In comments to the NPRM, Toyota Motor Corporation and the Flat Glass Manufacturers Association of Japan (FGMAJ) suggested harmonizing the shade band requirement with ECE R43 92/22EC (ECE R43). ECE R43 is used in Europe and Japan. It uses an up-angle of 7 degrees to determine the upper limit of the area for driving visibility. It also differs from SAE J100 by relying on the location of the European ''R-point'' in the seating design to define the boundaries for the shade bands, in contrast to SAE J100's use of the SAE seating reference point (SgRP). (There are further minor differences between SAE J100 and ECE R43.[4])

1. Final Rule

Because there were only slight technical differences between SAE J100 and ECE R43, and because the FMVSSs generally use the SgRP to define locations in vehicles rather than the R-point, NHTSA decided to adopt generally the SAE J100 recommended practice. That decision permitted manufacturers that presently manufacture their shade bands in accordance with SAE J100 to continue using the vehicle coordinates defined in SAE J100. However, the adoption included a substitution of the ECE R43 up-angle of 7 degrees to determine the upper limit of the area for driving visibility, instead of the SAE procedure up-angle of 5 degrees.

NHTSA believed that, due to the 7 degree up-angle, the shade band boundary line for most vehicles will likely more closely approximate the ECE R43 line than the line generated using the SAE J100 procedure. Thus, the agency believed that manufacturers would be able to market vehicles with the same AS–1 line in both Europe and the United States.

NHTSA further stated that it had commissioned General Test Laboratories (GTL) to undertake a small study of five windshields to determine, among other matters, the extent to which the shade bands on the vehicles fell within the boundaries specified for shade bands in ECE R43 (68 FR at 43968). One of the windshields had no shade band. Of the remaining four, three met the ECE R43 limit. The windshield that did not meet the limit was that of the Chevrolet Camaro, whose shade band was 20 millimeters (0.8 inches) over the ECE R43 boundary. NHTSA believed that the extent of this hypothetical test failure was slight, and that modifying the shade band location by 25 millimeters (mm)(1 inch) or less represents a reasonable undertaking that: (a) Would not be costly for manufacturers; and (b) could be accomplished within a short lead time.

2. Petitions for Reconsideration

DaimlerChrysler, General Motors (GM), PPG, Pilkington, and Visteon asked that the agency reconsider its decision to change the visibility up-angle from 5 degrees to 7 degrees. DaimerChrysler, GM and Pilkington believed that commenters were not given an opportunity to comment on the change of the up-angle from 5 to 7 degrees. Petitioners stated that NHTSA had not demonstrated a safety need or safety benefit for the modification. DaimlerChrysler, GM, Pilkington and PPG believed that, although the preamble to the final rule identified international harmonization as NHTSA's primary purpose for the change, NHTSA did not harmonize because it only adopted the 7 degree up-angle portion of ECE R43 in conjunction with the remaining requirements of SAE J100.

Petitioners also said that NHTSA had not performed any study indicating the percentage of vehicles that may not meet the new 7 degree up-angle requirement, and contend that the change to a 7 degree up-angle would place a significant burden on manufacturers. DaimlerChrysler estimated that 25 percent of vehicles currently in production would not comply with the 7 degree up-angle requirement.

Other issues raised by the petitioners pertained to excepted areas of the windshield, the burden of meeting the standard, excluding aftermarket items of glazing, and applying the requirements to side and rear windows. All of these issues are discussed below.

*b. Agency's Response*

1. Up-Angle of the Windshield Shade Band

The agency provided notice of and an opportunity to comment on the proposed adoption of limits on the width of shade bands. The NPRM specifically proposed an approach that determined the lower boundary of shade bands by way of measuring an up-angle. Comments were requested on the appropriateness of the proposal and on whether there were other, alternative industry standards that the agency should consider (64 FR at 42333). The 7 degree up-angle was adopted in response to Toyota's and FGMAJ's comments to the NPRM that suggested that the agency consider adopting ECE R43, which has a 7 degree up-angle specification. The incorporation of the 7 degree up-angle was a logical outgrowth of the proposal for a 5 degree up-angle. It was adopted to harmonize that aspect of FMVSS No. 205 with the European standard.

In response to the comments, NHTSA agrees that harmonization was only partly achieved using the 7 degree up-angle. The agency adopted the European shade band standard as it did because ECE R43 specified use of a different coordinate system for determining shade band boundaries than the system generally used in the FMVSS. NHTSA believed that requiring the use of a new coordinate system would burden vehicle manufacturers that now use the SAE coordinate system for design, since new software and design measurements would have to be used.

On reconsideration, the agency has decided to allow manufacturers to choose either the harmonized shade band provisions of ECE 43 or the unmodified windshield shade band provisions of SAE J100. This final rule gives manufacturers the option of meeting either SAE J100 with a 5 degree up-angle (using the vehicle coordinate system commonly used in the U.S.) or the shade band requirements of ECE R43 with a 7 degree up-angle (using the coordinate system used in Europe). Some vehicle platforms are already produced to meet the ECE R43 shade band requirements, so manufacturers of those vehicles choosing the latter option will be able to readily certify to FMVSS No. 205.

2. Excepted Areas

DaimlerChrysler stated that the July 2003 final rule did not consider the current version of ECE R43, which defines in annex 18 a ''reduced area B'' in addition to area B. Reduced area B allows obscurations with a maximum width of 300 millimeters, centered to the longitudinal median plane of the vehicle, between the 7 degree and a 3 degree up-angle.

NHTSA agrees with DaimlerChrysler that the language of the final rule did not include a recent amendment to ECE 43 establishing the excepted area. The provision for the excepted area has been added to the ECE 43 shade band specification in that shade band alternative.

[4] The test zones used by each standard are generated using different methods. The European test zone uses the ISO ''V'' points (coordinates related to seat back angle) while the U.S. zones are based on the SAE J941 eyellipse. However, the ISO ''V'' points are a derivative of the SAE eyellipse, and generate substantially similar zones. While the zones are not identical, the differences in practice account for only slight variations in calculated outcomes.

3. Aftermarket Parts

Visteon opposed incorporating SAE J100 regardless of which up-angle is specified because of the effect of the incorporation on the glass replacement aftermarket. Visteon stated that data on the vehicle SgRP or the 95th percentile eyellipse that are needed to verify location of the bottom-most edge of the shade band are owned and/or controlled by the vehicle manufacturers, not the glass manufacturer. Pilkington stated that the vehicle design information is not readily available to the glazing manufacturer other than in the early stages of vehicle development. Pilkington was concerned that when the vehicle goes out of production, even the vehicle manufacturer may lose the information. The petitioner believed that determining which windshields on vehicles out of production need their shade bands raised to meet the new 7 degree up-angle ''would be a tedious and time consuming exercise.''

DaimlerChrysler, Pilkington, GM and PPG asked that the agency consider permitting aftermarket replacement glazing (materials replacing glazing installed as original equipment) the option of complying with the requirements of FMVSS No. 205 as they existed prior to the July 2003 rulemaking. Petitioners stated that it would not be feasible to redesign replacement glazing for vehicles manufactured before the effective date of the rule such that the glazing would meet the updated requirements of FMVSS No. 205. GM stated that replacement glazing for vehicles manufactured prior to the effective date of the rule could become scarce, and consequently expensive, if required to meet the new standard.

On reconsideration, we agree with the petitioners that it may not be practical to apply the new FMVSS No. 205 requirements to aftermarket replacement glazing for older vehicles that are not subject to the new requirements of the standard. Therefore, we have decided to permit manufacturers of replacement glazing to meet the requirements of the glazing being replaced. They may meet either the upgraded FMVSS No. 205 or FMVSS No. 205(a), a reinstatement of the version of FMVSS No. 205 as it existed prior to the July 2003 final rule. Note that replacement glazing parts for vehicles required to meet the new FMVSS No. 205 requirements must meet the new FMVSS No. 205, including the shade band requirements at S5.3.

4. Side and Rear Windows

The agency stated in the preamble to the final rule that it believed that shade bands rarely exist on fixed side and rear windows since the majority of side and rear windows are tempered glass and shade bands can only be applied to laminated glazing (by tinting the inner layer). The preamble stated that ''the agency has decided to apply the provisions of SAE J100 exclusively to windshield applications.'' NHTSA noted that light transmittance requirements for side and rear windows in FMVSS No. 205 and ANSI/SAE Z26.1–1996 will continue to apply to side and rear windows.

Pilkington expressed concern in its petition for reconsideration that shade bands are currently being placed on side and rear windows and on windshields by means other than by tinting the inner layer of laminated glazing. The petitioner stated that eliminating printed shade bands on side or rear windows or windshields would render a large number of current vehicles out of compliance with the standard.

In response to Pilkington, the final rule did not apply the shade band requirements to glazing other than the windshield. S5.3 of the standard applies to ''shade band areas for *windshields*'' (emphasis added). Although FMVSS No. 205 does not specify any SAE J100 shade band requirements for side or rear windows, as noted in the July 2003 final rule, ''the light transmittance requirements for side and rear windows contained in FMVSS No. 205 and ANSI/SAE Z26.1–1996 will continue to apply to side and rear windows.'' (See 68 FR at 43969.) That is, shade bands on side and rear windows must not impede the ability of the vehicle to meet the light transmittance requirements of the standard at ''levels requisite for driving visibility.'' Areas on a piece of glazing above or below the ''levels requisite for driving visibility'' may be shaded as before.

5. Compliance Dates

There were compliance burdens associated with the July 2003 final rule that the petitions for reconsideration asked us to address and which this and earlier final rules have addressed. However, this final rule avoids any shade band changes for manufacturers using either the U.S. SAE practice or the European ECE 43 regulation.

Nonetheless, we recognized that manufacturers needed more time than that provided by the July 2003 final rule to test their products for compliance with the new shade band requirements. Accordingly, the August 18, 2004 final rule (69 FR 51188) extended the effective date of the original final rule from January 22, 2004 to September 1, 2006. The September 1, 2006 effective date gave NHTSA more time to respond to the petitions for reconsideration, and, as it was more than 3 years from the issuance of the July 2003 final rule, provided manufacturers more time to test vehicles.[5]

This document makes a small adjustment with regard to its application to vehicle manufacturers. A September 29, 2004 letter from Glenn Underwood of AGC Automotive-Americas (AGC) expressed concern that applying the effective date of the final rule to both motor vehicles and to motor vehicle equipment on the same day (September 1, 2006) impedes vehicle manufacturers' abilities to deplete inventory levels, which AGC stated could be at or above 60 days. It stated that its customers (vehicle manufacturers) are concerned that on September 1, 2006, they could be in the position of assembling vehicles that do not comply with the updated requirements of FMVSS No. 205 if they use glazing in inventory that was certified to the previous FMVSS No. 205. AGC asked that the new requirements be ''phased in'' so that AGC's customers would not have to ''replace all parts which do not comply'' on built vehicles.[6]

To address AGC's concerns without reducing the lead time provided for glazing equipment manufacturers to meet the standard's requirements, we are adjusting the effective date of the final rule to provide vehicle manufacturers 60 days to use the non-conforming glazing in their inventories. (We are also providing the additional 60 days to manufacturers of slide-in campers and pickup covers designed to carry persons while in motion, since they too could have glazing inventories.) Currently, the compliance date for vehicles is September 1, 2006 (*i.e.*, vehicles manufactured on or after September 1, 2006 must meet the upgraded standard). This rule extends that motor vehicle compliance date to

[5] As discussed above, this final rule also reduces the burdens on manufacturers by allowing manufacturers the compliance option of meeting ECE R43's shade band requirements, providing an exception area behind the inside rear view mirror, and excluding certain aftermarket components from the amended FMVSS No. 205. Each of these actions facilitate the manufacturers' ability to meet the new requirements within the provided leadtime.

[6] We pointed out in our reply to AGC that the July 2003 final rule provided for optional early compliance on the part of manufacturers. Thus, a glazing manufacturer could comply with the revised FMVSS No. 205 before September 1, 2006, and provide the certified glazing to the vehicle manufacturer ahead of September 1, 2006.

November 1, 2006. The compliance date of September 1, 2006 is not changed for glazing equipment that is not manufactured as replacement glazing.

## III. Most Difficult Part or Pattern and Other Corrections

*a. Meaning of the ''Most Difficult Part or Pattern'' in the Fracture Test*

Prior to the July 2003 final rule, FMVSS No. 205 incorporated the 1977 version of ANSI/SAE Z26.1 which, among other things, required a fracture test (Test No. 7) of a 12-inch square, flat sample of glazing. In contrast, ANSI/SAE Z26–1–1996 requires the use of a full-size production piece of vehicle window glass, which benefits safety by more accurately assessing the performance of the glazing actually used on a vehicle. Section 5.7.2 of ANSI/SAE Z26.1–1996 also states that the specimens of glazing selected for testing ''* * * shall be of the most difficult part or pattern designation within the model number.'' [7]

The provision for the ''most difficult part or pattern'' was interpreted by NHTSA in the NPRM as referring to the part of the glazing that provided for ''worst case'' testing, i.e., the portion of the glazing that NHTSA considered most likely to fail the test. The agency proposed stating in S5.1.2: ''NHTSA may test any portion of the glazing when doing the fracture test (Test No. 7) described in section 5.7 of ANS Z26.''

Comments to the NPRM disagreed with the interpretation and persuaded NHTSA that the interpretation of the NPRM was incorrect. The agency decided in the final rule that the correct interpretation was that the ''most difficult part or pattern'' refers to the worst-case component with respect to fracture performance, not the worst-case component test location on a particular component. (As illustrated by the agency in the final rule preamble, if a manufacturer produced side and rear windows with the same model number and the rear window performed worse in the fracture performance test, then the rear window must pass the fracture performance test.) NHTSA said in the preamble to the final rule that it ''has decided to clarify that *any* piece of glazing subject to the fracture test may be tested, and that the test procedure will be a single fracture origin or break point 25 mm (1 in.) inboard at the edge of the midpoint of the longest edge of the specimen as specified in ANSI/SAE Z26.1–1996.'' (Emphasis in text.)

Notwithstanding this statement, the regulatory text of the final rule (S5.2) was not changed from that of S5.1.2 of the NPRM to reflect this revised interpretation.

In petitions for reconsideration, GM, Pilkington, and PPG asked the agency to amend S5.2 to reflect the revised interpretation discussed in the preamble to the final rule. Petitioners also suggest that NHTSA amend S5.2 in accordance with SAE's comments to the NPRM, to state: ''NHTSA may conduct the Fracture Test as specified in ANSI/SAE Z26.1–1996 Section 5.7 on any piece of glazing material that is required to comply with Section 5.7.''

Today's final rule corrects S5.2 to make it consistent with the discussion of the preamble of the final rule. The corrected regulatory text states that each of the test specimens described in ANSI/SAE Z26.1–1996 Section 5.7 (fracture test) must meet the fracture test requirements of that section when tested in accordance with the test procedure set forth in that section.

*b. Applicability of Glazing Requirements to Multipurpose Passenger Vehicles*

As noted in the preamble to the July 2003 final rule, NHTSA intended to retain a provision in FMVSS No. 205 (S5.1.1.6) that required that multipurpose passenger vehicles (MPVs) must meet the same glazing requirements as those required for trucks (68 FR at 43970). An express provision was needed in the revised FMVSS No. 205, because while ANSI/SAE Z26.1–1996 prohibits the use of deep tinted windows adjacent to the driver in trucks, it does not extend the same prohibition to MPVs. However, notwithstanding the intent of the agency, the regulatory text of the July 2003 final rule excluded the provision from the final rule. We are correcting this oversight by adding a subsection to S5.1 to specify that, except as otherwise specifically provided by the standard, glazing for use in multipurpose passenger vehicles shall conform to the requirements for glazing specified in ANSI/SAE Z26.1–1996 for use in trucks.

*c. Item 4A Glazing*

The following correcting amendment responds to an October 18, 2004 letter submitted by Lance Tunick of Vehicle Services Consulting, Inc., regarding the use of item 4A rigid plastic glazing and to a May 6, 2005 ''petition for technical corrections'' from the Alliance of Automobile Manufacturers.

Prior to the July 2003 final rule, FMVSS No. 205 permitted item 4A glazing in all areas in which Item 4 safety glazing may be used, provided, however, that for side windows, the item 4A glazing was only allowed to be used rearward of the ''C'' pillar. After issuance of the July 2003 final rule, NHTSA discovered that the incorporation of the 1996 version of ANSI/SAE Z26.1 inadvertently permitted item 4A glazing to be used in side windows rearward of the ''B'' pillar. The agency sought in the September 26, 2003 final rule to correct this oversight by adding an S5.5 to FMVSS No. 205, ''to make clear that Item 4A glazing is only permitted for use in side windows rearward of the ''C'' pillar.'' (68 FR 55544.)

Mr. Tunick stated that S5.5 appears to prohibit the use of Item 4A glazing in the rear window of a convertible passenger car top and asked if that was our intent. The answer is no. We did not intend to limit Item 4A to only side windows rearward of the C pillar, to the exclusion of other locations for such glazing that are now permitted under Item 4 in the existing FMVSS No. 205. To clarify the language of the standard, we are amending S5.5 of FMVSS No. 205 along the lines suggested by Mr. Tunick in his letter. The amended S5.5 reads as follows: ''S5.5 Item 4A Glazing. Item 4A glazing may be used in all areas in which Item 4 safety glazing may be used, and also for side windows rearward of the ''C'' pillar. I.e., Item 4A glazing may be used under Item 4A paragraph (b) of ANSI/SAE Z26.1–1996 only in side windows rearward of the 'C' pillar.''

*d. Location of Arrow Within ''AS'' Markings*

In its petition for technical corrections of May 6, 2005, the Alliance of Automobile Manufacturers (the Alliance) also asked that the ''longstanding location of the arrow within the 'AS' marking be restored.'' The Alliance explained that prior to the 1996 update to ANSI/SAE Z26.1, the arrow appeared in the second position of the ''AS'' marking; *e.g.*, A↓S1 [8] or A↑S2. In a typographical error in the 1996 update, the arrow was inadvertently moved to the third position in the marking to read, *e.g.*, AS↑2. In an interpretation letter of December 1, 2004 to AGC Automotive,

[7] Fracture Test No. 7 states, ''[T]he number of specimens selected from each model number of glazing shall be six (6) and shall all be of the most difficult part or pattern [emphasis added] designation within the model number. The fracture origin or break point is 25 mm (1 inch) inboard of the edge at the midpoint of the longest edge of the specimen. If the specimen has two long edges of equal length, the edge nearer the manufacturer's trademark is chosen. To pass the test, the largest fractured particle must weigh 4.3 g (0.15 oz.) or less.''

[8] In ANSI/SAE Z26.1–1996, the ''arrow down'' marking includes a horizontal line above the ''A↓S1,'' and the ''arrow up'' marking includes a horizontal line below the ''A↑S1.''

NHTSA confirmed that this revised arrow location would be required when the amended FMVSS No. 205 takes effect.

The Alliance stated that the SAE Glazing Committee convened a special meeting on March 8, 2005 to discuss the arrow location issue and to consider remedies. The Glazing Committee clarified that the revised arrow location was unintentional, and a typographical error in ANSI/SAE Z26.1–1996. It was also recognized during the March 8, 2005 meeting that changing silk screens to comply with the erroneous arrow location would be extremely costly and would require ''considerable'' lead time.

The Alliance stated that although the SAE Glazing Committee has initiated a technical correction to ANSI/SAE Z26.1 to restore the arrow location to the second position of the ''AS'' marking, it was not certain that SAE will complete its work soon enough to allow NHTSA to simply incorporate it by reference. Accordingly, the Alliance recommended that S3.2(a) and S5.1 of FMVSS No. 205 be revised to restore the arrow to the second slot of the AS marking.

NHTSA agrees that the revised arrow location was a typographical error in ANSI/SAE Z26.1–1996, and that industry should not have to incur unnecessary expenses to comply with the erroneous arrow location. Therefore, in this final rule, at S5.1.3, NHTSA corrects the typographical error in ANSI/SAE Z26.1–1996 by including an exception to ANSI/SAE Z26.1–1996 by reinstating the arrow in the ''AS'' marking to the second position. NHTSA will not amend S3.2(a), which is the provision in FMVSS No. 205 incorporating by reference ANSI/SAE Z26.1–1996.

## IV. Regulatory Analyses and Notices

### *A. Executive Order 12866, Regulatory Planning and Review*

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. The effect of this rulemaking action is to clarify regulatory requirements of a final rule of July 25, 2003. It will not impose any additional burden on any person. The agency believes that this impact is so minimal as to not warrant the preparation of a full regulatory evaluation.

### *B. Environmental Impacts*

We have not conducted an evaluation of the impacts of this final rule under the National Environmental Policy Act. This rulemaking action clarifies regulatory requirements in a final rule of July 25, 2003. This rulemaking does not impose any change that would have any environmental impacts. Accordingly, no environmental assessment is required.

### *C. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rulemaking action will have on small entities (5 U.S.C. Sec. 601 *et seq.*). I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act.

The following is our statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). The final rule affects manufacturers of motor vehicles and motor vehicle glazing. According to the size standards of the Small Business Association (at 13 CFR Part 121.601), manufacturers of glazing are considered manufacturers of ''Motor Vehicle Parts and Accessories'' (SIC Code 3714). The size standard for SIC Code 3714 is 750 employees or fewer. The size standard for manufacturers of ''Motor Vehicles and Passenger Car Bodies'' (SIC Code 3711) is 1,000 employees or fewer. This final rule will not have any significant economic impact on a substantial number of small businesses in these industries because the rule only clarifies requirements of a final rule of July 25, 2003. Small organizations and governmental jurisdictions that purchase glazing will not be significantly affected because this rulemaking will not cause price increases. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.

### *D. Executive Order 13132, Federalism*

E.O. 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' E.O. 13132 defines the term ''Policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under E.O. 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

### *E. The Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This action will not result in additional expenditures by state, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

### *F. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a

valid OMB control number. This final rule does not impose any new collection of information requirements for which a 5 CFR part 1320 clearance must be obtained.

*G. Civil Justice Reform*

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision may prescribe or continue in effect a standard applicable to the same aspect of performance of a Federal motor vehicle safety standard only if the standard is identical to the Federal standard. However, the United States Government, a state, or political subdivision of a state, may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings are not required before parties file suit in court.

*H. Plain Language*

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

Comment is solicited on the extent to which this final rule effectively uses plain language principles.

*I. National Technology Transfer and Advancement Act*

Under the National Technology and Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.''

Certain technical standards developed by the American National Standards Institute (ANSI) and Society of Automotive Engineers (SAE) have been considered and incorporated by reference in the final rule published on July 25, 2003, which upgraded the requirements of FMVSS No. 205. This final rule clarifies provisions of the July 25, 2003 final rule.

*J. Privacy Act*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

*K. Executive Order 13045, Economically Significant Rules Disproportionately Affecting Children*

This rule is not subject to E.O. 13045 because it is not ''economically significant'' as defined under E.O. 12866, and does not concern an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles.

■ For the reasons set forth in the preamble, the Agency amends 49 CFR Part 571 as follows.

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, 30166 and 30177; delegations of authority at 49 CFR 1.50.

■ 2. In consideration of the foregoing, § 571.205 is amended by revising S3.1, adding S5.1.1, S5.1.2, and S5.1.3, and by revising S5.2, S5.3, and S5.5, to read as follows:

**§ 571.205 Glazing Materials**

* * * * *

*S3.1 Application.*

(a) This standard applies to passenger cars, multipurpose passenger vehicles, trucks, buses, motorcycles, slide-in campers, pickup covers designed to carry persons while in motion and low speed vehicles, and to glazing materials for use in those vehicles.

(b) For glazing materials manufactured before September 1, 2006, and for motor vehicles, slide-in campers and pickup covers designed to carry persons while in motion, manufactured before November 1, 2006, the manufacturer may, at its option, comply with 49 CFR 571.205(a) of this section.

* * * * *

S5.1.1 *Multipurpose passenger vehicles.* Except as otherwise specifically provided by this standard, glazing for use in multipurpose passenger vehicles shall conform to the requirements for glazing for use in trucks as specified in ANSI/SAE Z26.1–1996.

S5.1.2 *Aftermarket replacement glazing.* Glazing intended for aftermarket replacement is required to meet the requirements of this standard or the requirements of 49 CFR 571.205(a) applicable to the glazing being replaced.

S5.1.3 *Location of arrow within ''AS'' markings.* In ANSI/SAE Z26.1–1996 (August 11, 1997) Section 7. ''Marking of Safety Glazing Materials,'' on page 33, in the right column, in the first complete sentence, the example markings ''AS↓1'', ''AS↓14'' and ''AS↑2'' are corrected to read ''A↓S1'', ''A↓S14'' and ''A↑S2''. Note that the arrow indicating the portion of the material that complies with Test 2 is placed with its base adjacent to a horizontal line.

S5.2 Each of the test specimens described in ANSI/SAE Z26.1–1996 Section 5.7 (fracture test) must meet the fracture test requirements of that section when tested in accordance with the test procedure set forth in that section.

S5.3 *Shade Bands.* Shade band areas for windshields shall comply with the requirements of either S5.3.1 or S5.3.2.

S5.3.1 Shade bands for windshields shall comply with SAE J100 NOV1999.

S5.3.2 Except as provided in S5.3.2.1, the lower boundary of shade bands for windshields shall be a plane inclined upwards from the X axis of the vehicle at 7 degrees, passing through point $V_1$, and parallel to the Y axis. The coordinate system and point $V_1$ shall be as specified in Annexes 18 and 19 of European Commission for Europe (ECE) Regulation No. 43 Revision 2—Amendment 1.

S5.3.2.1 In the area 300 mm wide centered on the intersection of the windshield surface and longitudinal vertical median plane of the vehicle, the lower boundary of shade bands for windshields shall be a plane inclined upwards from the X axis of the vehicle

at 3 degrees, passing through point $V_1$, and parallel to the Y axis.

* * * * *

S5.5 Item 4A Glazing. Item 4A glazing may be used in all areas in which Item 4 safety glazing may be used, and also for side windows rearward of the ''C'' pillar. I.e., Item 4A glazing may be used under Item 4A paragraph (b) of ANSI/SAE Z26.1–1996 only in side windows rearward of the ''C'' pillar.

* * * * *

■ 3. Section 571.205(a) is added to read as follows:

**§ 571.205(a) Glazing equipment manufactured before September 1, 2006 and glazing materials used in vehicles manufactured before November 1, 2006.**

S1. *Scope.* This standard specifies requirements for glazing equipment manufactured before September 1, 2006 for use in motor vehicles and motor vehicle equipment, and specifies requirements for motor vehicles manufactured before November 1, 2006 and for replacement glazing for those vehicles. A manufacturer may, at its option, comply with 49 CFR 571.205 instead of this standard.

S2. *Purpose.* The purpose of this standard is to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions.

S3. *Application.* This standard applies to glazing equipment manufactured before September 1, 2006 for use in motor vehicles and motor vehicle equipment. In addition, this standard applies to the following vehicles manufactured before November 1, 2006: passenger cars, low speed vehicles, multipurpose passenger vehicles, trucks, buses, and motorcycles. This standard also applies to slide-in campers, and pickup covers designed to carry persons while in motion, manufactured before November 1, 2006.

*S4. Definitions*

*Bullet resistant shield* means a shield or barrier that is installed completely inside a motor vehicle behind and separate from glazing materials that independently comply with the requirements of this standard.

*Camper* means a structure designed to be mounted in the cargo area of a truck, or attached to an incomplete vehicle with motive power, for the purpose of providing shelter for persons.

*Glass-plastic glazing material* means a laminate of one or more layers of glass and one or more layers of plastic in which a plastic surface of the glazing faces inward when the glazing is installed in a vehicle.

*Motor home* means a multipurpose passenger vehicle that provides living accommodations for persons.

*Pickup cover* means a camper having a roof and sides but without a floor, designed to be mounted on and removable from the cargo area of a truck by the user.

*Slide-in camper* means a camper having a roof, floor, and sides, designed to be mounted on and removable from the cargo area of a truck by the user.

*S5. Requirements*

*S5.1. Materials*

S5.1.1 Glazing materials for use in motor vehicles, except as otherwise provided in this standard shall conform to the American National Standard ''Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways'' Z–26.1–1977, January 26, 1977, as supplemented by Z26.1a, July 3, 1980 (hereinafter referred to as ''ANS Z26''). However, Item 11B glazing as specified in that standard may not be used in motor vehicles at levels requisite for driving visibility, and Item 11B glazing is not required to pass Tests Nos. 17, 30, and 31.

S5.1.1.1 The chemicals specified for testing chemical resistance in Tests Nos. 19 and 20 of ANS Z26 shall be:

(a) One percent solution of nonabrasive soap.

(b) Kerosene.

(c) Undiluted denatured alcohol, Formula SD No. 30 (1 part 100-percent methyl alcohol in 10 parts 190-proof ethyl alcohol by volume).

(d) Gasoline, ASTM Reference Fuel C, which is composed of Isooctane 50 volume percentage and Toluene 50 volume percentage. Isooctane must conform to A2.7 in Annex 2 of the Motor Fuels Section of the *1985 Annual Book of ASTM Standards*, Vol. 05.04, and Toluene must conform to ASTM Specification D362–84, *Standard Specification for Industrial Grade Toluene.* ASTM Reference Fuel C must be used as specified in:

(1) Paragraph A2.3.2 and A2.3.3 of Annex 2 of Motor Fuels, Section 1 in the *1985 Annual Book of ASTM Standards*; and

(2) OSHA Standard 29 CFR 1910.106—''Handling Storage and Use of Flammable Combustible Liquids.'' This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and in 1 CFR part 51. Copies may be inspected at the Technical Reference Library, NHTSA, 400 Seventh Street, SW., Room 5108, Washington, DC 20590, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20408.

S5.1.1.2 The following locations are added to the lists specified in ANS Z26 in which item 4, item 5, item 8, and item 9 safety glazing my be used:

(a)–(i) [Reserved]

(j) Windows and doors in motor homes, except for the windshield and windows to the immediate right or left of the driver.

(k) Windows and doors in slide-in campers and pickup covers.

(l) Windows and doors in buses except for the windshield, windows to the immediate right or left of the driver, and rearmost windows if used for driving visibility.

(m) For Item 5 safety glazing only: Motorcycle windscreens below the intersection of a horizontal plane 380 millimeters vertically above the lowest seating position.

S5.1.1.3 The following locations are added to the lists specified in ANS Z26 in which item 6 and item 7 safety glazing may be used:

(a)–(i) [Reserved]

(j) Windows and doors in motor homes, except for the windshield, forward-facing windows, and windows to the immediate right or left of the driver.

(k) Windows, except forward-facing windows, and doors in slide-in campers and pickup covers.

(l) For item 7 safety glazing only:

(1) Standee windows in buses.

(2) Interior partitions.

(3) Openings in the roof.

S5.1.1.4 The following locations are added to the lists specified in ANS Z26 in which item 8 and item 9 safety glazing may be used:

(a)–(e) [Reserved].

(f) Windows and doors in motor homes, except for the windshield and windows to the immediate right or left of the driver.

(g) Windows and doors in slide-in campers and pickup covers.

S5.1.1.5 The phrase ''readily removable'' windows as defined in ANS Z26, for the purposes of this standard, in buses having a GVWR of more than 4536 kilograms (10,000 pounds), shall include pushout windows and windows mounted in emergency exits that can be manually pushed out of their location in the vehicle without the use of tools, regardless of whether such windows remain hinged at one side to the vehicle.

S5.1.1.6 Multipurpose passenger vehicles. Except as otherwise specifically provided by this standard,

glazing for use in multipurpose passenger vehicles shall conform to the requirements for glazing for use in trucks as specified in ANS Z26.

S5.1.1.7 Test No. 17 is deleted from the list of tests specified in ANS Z26 for Item 5 glazing material and Test No. 18 is deleted from the lists of tests specified in ANS Z26 for Item 3 and Item 9 glazing material.

S5.1.2 In addition to the glazing materials specified in ANS Z26, materials conforming to S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, S5.1.2.8, and S5.1.2.11 may be used in the locations of motor vehicles specified in those sections.

S5.1.2.1 Item 11C—Safety Glazing Material for Use in Bullet Resistant Shields. Bullet resistant glazing that complies with Tests Nos. 2, 17, 19, 20, 21, 24, 27, 28, 29, 30 and 32 of ANS Z26 and the labeling requirements of S5.1.2.5 may be used only in bullet resistant shields that can be removed from the motor vehicle easily for cleaning and maintenance. A bullet resistant shield may be used in areas requisite for driving visibility only if the combined parallel luminous transmittance with perpendicular incidence through both the shield and the permanent vehicle glazing is at least 60 percent.

S5.1.2.2 Item 12—Rigid Plastics. Safety plastics materials that comply with Tests Nos. 10, 13, 16, 19, 20, 21,and 24 of ANS Z26, with the exception of the test for resistance to undiluted denatured alcohol Formula SD No. 30, and that comply with the labeling requirements of S5.1.2.5, may be used in a motor vehicle only in the following specified locations at levels not requisite for driving visibility.

(a) Window and doors in slide-in campers and pickup covers.

(b) Motorcycle windscreens below the intersection of a horizontal plane 380 millimeters vertically above the lowest seating position.

(c) Standee windows in buses.

(d) Interior partitions.

(e) Openings in the roof.

(f) Flexible curtains or readily removable windows or in ventilators used in conjunction with readily removable windows.

(g) Windows and doors in motor homes, except for the windshield and windows to the immediate right or left of the driver.

(h) Windows and doors in buses, except for the windshield and window to the immediate right and left of the driver.

S5.1.2.3 Item 13—Flexible plastics. Safety plastic materials that comply with Tests Nos. 16, 19, 20, 22, and 23 or 24 of ANS Z26, with the exception of the test for resistance to undiluted denatured alcohol Formula SD No. 30, and that comply with the labeling requirements of S5.1.2.5 may be used in the following specific locations at levels not requisite for driving visibility.

(a) Windows, except forward-facing windows, and doors in slide-in campers and pickup covers.

(b) Motorcycle windscreens below the intersection of a horizontal plane 380 millimeters vertically above the lowest standing position.

(c) Standee windows in buses.

(d) Interior partitions.

(e) Openings in the roof.

(f) Flexible curtains or readily removable windows or in ventilators used in conjunction with readily removable windows.

(g) Windows and doors in motor homes, except for the windshield, forward-facing windows, and windows to the immediate right or left of the driver.

S5.1.2.4 Item 14—Glass Plastics. Glass-plastic glazing materials that comply with the labeling requirements of S5.1.2.10 and Tests Nos. 1, 2, 3, 4, 9, 12, 15, 16, 17, 18, 19, 24, 26, and 28, as those tests are modified in S5.1.2.9, Test Procedures for Glass-Plastics, may be used anywhere in a motor vehicle, except that it may not be used in windshields of any of the following vehicles: convertibles, vehicles that have no roof, vehicles whose roofs are completely removable.

S5.1.2.5 Item 15A—Annealed Glass-Plastic for Use in All Positions in a Vehicle Except the Windshield. Glass-plastic glazing materials that comply with Tests Nos. 1, 2, 3, 4, 9, 12, 16, 17, 18, 19, 24, and 28, as those tests are modified in S5.1.2.9 Test Procedures for Glass-Plastics, may be used anywhere in a motor vehicle except the windshield.

S5.1.2.6 Item 15B—Tempered Glass-Plastic for Use in All Positions in a Vehicle Except the Windshield. Glass-plastic glazing materials that comply with Tests Nos. 1, 2, 3, 4, 6, 7, 8, 16, 17, 18, 19, 24, and 28, as those tests are modified in S5.1.2.9 Test Procedures for Glass-Plastics, may be used anywhere in a motor vehicle except the windshield.

S5.1.2.7 Item 16A—Annealed Glass-Plastic for Use in All Positions in a Vehicle Not Requisite for Driving Visibility. Glass-plastic glazing materials that comply with Tests Nos. 3, 4, 9, 12, 16, 19, 24, and 28, as those tests are modified in S5.1.2.9 Test Procedures for Glass-Plastics, may be used in a motor vehicle in all locations not requisite for driving visibility.

S5.1.2.8 Item 16B—Tempered Glass-Plastic for Use in All Positions in a Vehicle Not Requisite for Driving Visibility. Glass-plastic glazing materials that comply with Tests Nos. 3, 4, 6, 7, 8, 16, 19, 24, and 28, as those tests are modified in S5.1.2.9 Test Procedures for Glass-Plastics, may be used in a motor vehicle in all locations not requisite for driving visibility.

S5.1.2.9—Test Procedures for Glass-Plastics. (a) Tests Nos. 6, 7, 8, 9, 12, 16, and 18, shall be conducted on the glass side of the specimen, i.e., the surface which would face the exterior of the vehicle. Tests Nos. 17, 19, 24, and 26 shall be conducted on the plastic side of the specimen, i.e., the surface which would face the interior of the vehicle. Test No. 15 should be conducted with the glass side of the glazing facing the illuminated box and the screen, respectively. For Test No. 19, add the following to the specified list: an aquaeous solution of isopropanol and glycol ether solvents in concentration no greater than ten percent or less than five percent by weight and ammonium hydroxide no greater than five percent or less than one percent by weight, simulating typical commercial windshield cleaner.

(b) Glass-plastic specimens shall be exposed to an ambient air temperature of −40 degrees Celsius (plus or minus 5 degrees Celsius), for a period of 6 hours at the commencement of Test No. 28, rather than at the initial temperature specified in that test. After testing, the glass-plastic specimens shall show no evidence of cracking, clouding, delaminating, or other evidence of deterioration.

(c) Glass-plastic specimens tested in accordance with Test No. 17 shall be carefully rinsed with distilled water following the abrasion procedure and wiped dry with lens paper. After this procedure, the arithmetic means of the percentage of light scattered by the three specimens as a result of abrasion shall not exceed 4.0 percent.

(d) Data obtained from Test No. 1 should be used when conducting Test No. 2.

(e)(1) Except as provided in S5.1.2.9(e)(2), glass-plastic glazing specimens tested in accordance with Tests Nos. 9, 12, and 26 shall be clamped in the test fixture in Figure 1 of this standard in the manner shown in that figure. The clamping gasket shall be made of rubber 3 millimeters (mm) thick of hardness 50 IRHD (International Rubber Hardness Degrees), plus or minus five degrees. Movement of the test specimen, measured after the test, shall not exceed 2 mm at any point along the inside periphery of the fixture.

Movement of the test specimen beyond the 2 mm limit shall be considered an incomplete test, not a test failure. A specimen used in such an incomplete test shall not be retested.

(2) At the option of the manufacturer, glass-plastic glazing specimens tested in accordance with Tests Nos. 9 and 12 may be tested unclamped. Such specimens shall be tested using the fixture in Figure 1 of the standard, including the upper frame (unclamped) which holds the specimen in place.

S5.1.2.10 Cleaning Instructions. (a) Each manufacturer of glazing materials designed to meet the requirements of S5.1.2.1., S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, S5.1.2.8, or S5.1.2.11 shall affix a label, removable by hand without tools, to each item of glazing materials. The label shall identify the product involved, specify instructions and agents for cleaning the material that will minimize the loss of transparency, and instructions for removing frost and ice, and, at the option of the manufacturer, refer owners to the vehicle's Owners Manual for more specific cleaning and other instructions.

(b) Each manufacturer of glazing materials designed to meet the requirements of paragraphs S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, or S5.1.2.8 may permanently and indelibly mark the lower center of each item of such glazing material, in letters not less than 4.5 millimeters nor more than 6 millimeters high, the following words, GLASS PLASTIC MATERIAL—SEE OWNER'S MANUAL FOR CARE INSTRUCTIONS.

S5.1.2.11 Test Procedures for Item 4A—Rigid Plastic for Use in Side Windows Rearward of the C'' Pillar. (a) Glazing materials that comply with Tests Nos. 2, 10, 13, 16, 17, as that test is modified in S5.1.2.9(c) (on the interior side only), 17, as that test is modified in paragraph (b) of this section (on the exterior side only), 19, 20, 21, and 24 of ANS Z26.1, may be used in the following specific locations:

(1) All areas in which item 4 safety glazing may be used.

(2) Any side window that meets the criteria in S5.1.2.11(a)(2)(i) and (ii):

(i) Is in a vehicle whose rearmost designated seating position is forward-facing and cannot be adjusted so that it is side or rear-facing; and

(ii) The forwardmost point on its visible interior surface is rearward of the vertical transverse plane that passes through the shoulder reference point (as described in Figure 1 of Section 571.210 Seat belt assembly anchorages) of that rearmost seating position.

(b)(1) The initial maximum haze level shall not exceed 1.0 percent. The specimens are subjected to abrasion for 100 cycles and then carefully wiped with dry lens paper (or its equivalent). The light scattered by the abraded track is measured in accordance with Test 17. The arithmetic mean of the percentages of light scattered by the three specimens shall not exceed 4.0 percent after being subjected to abrasion for 100 cycles.

(2) The specimen is remounted on the specimen holder so that it rotates substantially in a plane and subjected to abrasion for an additional 400 cycles on the same track already abraded for 100 cycles. Specimens are carefully wiped after abrasion with dry lens paper (or its equivalent). The light scattered by the abraded track is then measured as specified in Test 17. The arithmetic mean of the percentages of light scattered by the three specimens shall not exceed 10.0 percent after being subjected to abrasion for 500 cycles.

S5.2 Edges. In vehicles except schoolbuses, exposed edges shall be treated in accordance with SEA Recommended Practice J673a, ''Automotive Glazing,'' August 1967. In schoolbuses, exposed edges shall be banded.

S6. Certification and Marking.

S6.1 Each prime glazing material manufacturer, except as specified below, shall mark the glazing materials it manufactures in accordance with section 6 of ANS Z26. The materials specified in S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, S5.1.2.8, and S5.1.2.11 shall be identified by the marks ''AS 11C'', ''AS 12'', ''AS 13'', ''AS 14'', ''AS 15A'', ''AS 15B'', ''AS 16A'', ''AS 16B'', and ''AS 4'', respectively. A prime glazing material manufacturer is one which fabricates, laminates, or tempers the glazing material.

S6.2 Each prime glazing material manufacturer shall certify each piece of glazing material to which this standard applies that is designed as a component of any specific motor vehicle or camper, pursuant to section 114 of the National Traffic and Motor Vehicle Safety Act of 1966 (49 U.S.C. § 30115), by adding to the mark required by S6.1 in letters and numerals of the size specified in section 6 of ANS Z26, the symbol ''DOT'' and a manufacturer's code mark, which will be assigned by NHTSA on the written request of the manufacturer.

S6.3 Each prime glazing material manufacturer shall certify each piece of glazing material to which this standard applies that is designed to be cut into components for use in motor vehicles or items of motor vehicle equipment, pursuant to section 114 of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. § 30115).

S6.4 Each manufacturer or distributor who cuts a section of glazing material to which this standard applies, for use in a motor vehicle or camper, shall mark that material in accordance with section 6 of ANS Z26.

S6.5 Each manufacturer or distributor who cuts a section of glazing material to which this standard applies, for use in a motor vehicle or camper, shall certify that his product complies with this standard in accordance with section 114 of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30115).

**BILLING CODE 4910–59–P**

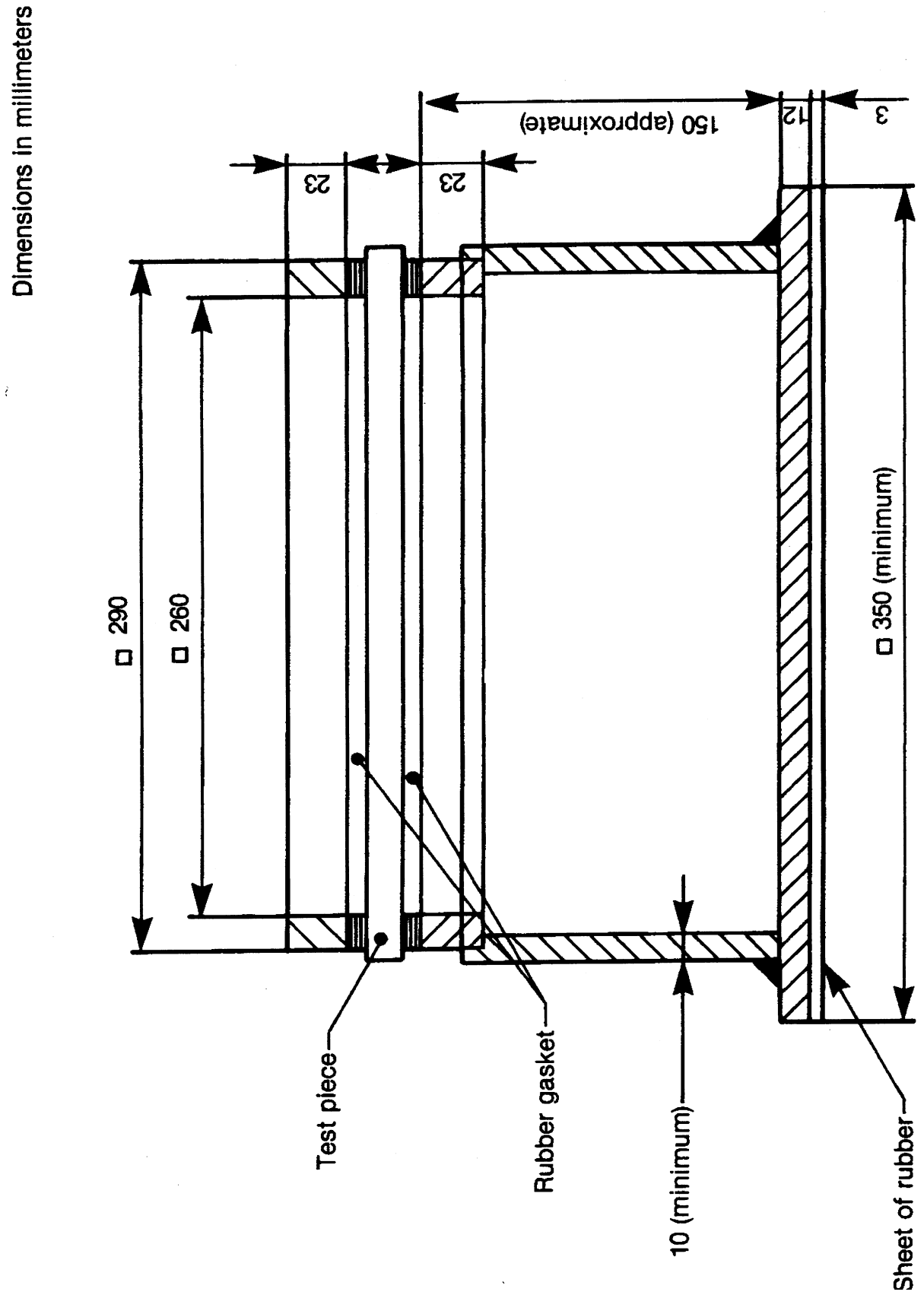


**Figure 1 — Test Fixture For Clamped Specimens**

Issued on: June 29, 2005.

**Jeffrey W. Runge,**

*Administrator.*

[FR Doc. 05–13248 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–59–C**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 575

**[Docket No. NHTSA–05–xx]**

**RIN 2127–AF81**

### Truck-Camper Loading; Correction

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Correcting amendment.

**SUMMARY:** On July 12, 1996, the National Highway Traffic Safety Administration (NHTSA) published a final rule that rescinded Federal Motor Vehicle Safety Standard No. 126, Truck-camper loading, and combined its provisions with 49 CFR 575.103, Truck-camper loading. When combining these two regulations, NHTSA inadvertently changed a cross reference so that it refers to only one of five information requirements, instead of all five as it had previously. This document corrects that error.

**DATES:** Effective August 11, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mary Versailles, Office of International Policy, Fuel Economy and Consumer Programs, (Telephone: 202–366–0846) (Fax: 202–493–2290).

**SUPPLEMENTARY INFORMATION:** On July 12, 1996, the National Highway Traffic Safety Administration (NHTSA) published a final rule that rescinded Federal Motor Vehicle Safety Standard No. 126, Truck-camper loading, and combined its provisions with 49 CFR 575.103, Truck-camper loading (61 FR 36655).

Prior to the July 12, 1996, final rule, 49 CFR 575.103(e) required manufacturers of trucks capable of accommodating a slide-in camper to provide five items of information contained in paragraphs (e)(1) through (5) of that standard. If a manufacturer recommended that the truck not be used for a slide-in camper, the manufacturer was required by 49 CFR 575.103(f) to provide a statement to that effect instead of the information in 49 CFR 575.103(e).

The July 12, 1996, final rule renumbered the then existing 49 CFR 575.103(e) as 49 CFR 575.103(e)(2)(i) and the then existing 49 CFR 575.103(f) as 49 CFR 575.103(e)(2)(ii). However, the cross reference in 49 CFR 575.103(e)(2)(ii) was incorrectly listed as 49 CFR 575.103(e)(2)(i)(E) (the then existing 49 CFR 575.103(e)(5)) instead of all of 49 CFR 575.103(e)(2)(i).

This notice corrects that error.

This correction will not impose or relax any substantive requirements or burdens on manufacturers. Therefore, NHTSA finds for good cause that any notice and opportunity for comment on this correcting amendment is not necessary.

**List of Subjects in 49 CFR Part 575**

Consumer protection, Motor vehicle safety, Reporting and recordkeeping, Tires.

■ 49 CFR part 575 is corrected by making the following correcting amendment:

## PART 575—[CORRECTED]

■ 1. The authority citation continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at CFR 1.50.

■ 2. Paragraph 575.103(e)(2)(ii) is revised to read as follows:

**§ 575.103 Truck-camper loading.**

* * * * *

(e) Requirements

* * * * *

(2) Trucks

* * * * *

(ii) If a truck would accommodate a slide-in camper but the manufacturer of the truck recommends that the truck not be used for that purpose, the information specified in paragraph (e)(2)(i) of this section shall not be provided but instead the manufacturer shall provide a statement that the truck should not be used to carry a slide-in camper.

* * * * *

Issued: July 7, 2005.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 05–13651 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 040112010–4114–02; I.D. 063005A]**

### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Modification of Access to the Eastern U.S./Canada Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; access and gear modification.

**SUMMARY:** The Administrator, Northeast Region, NMFS (Regional Administrator), has projected that the total allowable catch (TAC) for Georges Bank (GB) cod allocated for harvest from the Eastern U.S./Canada Area will be fully harvested prior to the end of the fishing year if the rate of GB cod harvest remains at the current level. In response, this action limits all Northeast (NE) multispecies days-at-sea (DAS) vessels to one trip into the Eastern U.S./Canada Area per month through the end of the 2005 fishing year. In addition, this action requires all NE multispecies DAS vessels fishing in the Eastern U.S./Canada Area to use a haddock separator trawl for the remainder of the fishing year. This action is being taken to slow the rate of GB cod harvest from the Eastern U.S./Canada Area and to prolong access to the Eastern U.S./Canada Area throughout the 2005 fishing year and to help prevent over-harvesting the GB cod TAC from the Eastern U.S./Canada Area during the 2005 fishing year in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

**DATES:** The requirement that NE multispecies DAS vessels are limited to one trip per month into the Eastern U.S./Canada Area is effective 0001 hr local time, July 12, 2005, through 2400 hr local time, April 30, 2006. Two exceptions to this one trip per month requirement are discussed in the supplementary information section of this temporary rule.

The requirement for NE multispecies DAS vessels to use a haddock separator trawl in the Eastern U.S./Canada Area is effective 0001 hr local time, July 27, 2005, through 2400 hr local time, April 30, 2006.

**FOR FURTHER INFORMATION CONTACT:** Douglas W. Christel, Fishery Policy Analyst, phone (978) 281–9141, fax (978) 281–9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing fishing activity in the U.S./Canada Management Area are found at 50 CFR 648.85(a)(3). The U.S./Canada Resource Sharing Understanding implemented by Amendment 13 to the NE Multispecies FMP (April 27, 2004; 69 FR 22906) established hard TACs for GB cod, GB haddock, and GB yellowtail flounder. The hard TACs for GB cod and GB haddock are specific to the Eastern U.S./Canada Area while the hard TAC for GB yellowtail flounder applies to vessel operations in both the Eastern and Western U.S./Canada Areas. The final GB cod TAC allocation for the 2005 fishing year is specified at 260 mt (July 7, 2005; 70 FR 39190). These TACs are monitored using catch information obtained from vessel monitoring system (VMS) catch reports, observer data, and other available information.

Once the Regional Administrator projects that any one of these TACs have been caught, the Regional Administrator is required to close the Eastern U.S./Canada Area to all NE multispecies DAS vessels pursuant to § 648.85(a)(3)(iv)(E). To prevent the fishery from over-harvesting these species, the Regional Administrator may implement regulations intended to slow the rate of harvest of these species once the Regional Administrator projects that 30 percent and/or 60 percent of the TAC allocations for GB cod, GB haddock, or GB yellowtail flounder have been harvested, as specified at § 648.85(a)(3)(iv)(D). These regulations provide the Regional Administrator with the authority to modify gear requirements and modify or close access to the U.S./Canada Management Areas, among other provisions.

Based upon available information, to date, NE multispecies DAS vessels have harvested over 50 percent of the GB cod TAC. At this rate, the GB cod TAC would be harvested well before the end of the 2005 fishing year on April 30, 2006. Based on this information, and the rate at which GB cod is being harvested, this action limits NE multispecies DAS vessels to one trip into the Eastern U.S./Canada Area per month for the remainder of the 2005 fishing year. Vessels that have already declared their intent to fish in the Eastern U.S./Canada Area (VMS Area Codes 2, 5, or 6) through VMS, departed on a trip, and crossed the demarcation line as of 0001 hours on July 12, 2005, may finish their trip. Any trip that began before July 12, 2005, will not count toward the one trip per month limit for the month of July. A trip will be counted toward the month in which the vessel started a trip into the Eastern U.S./Canada Area by declaring into the Eastern U.S./Canada Area through VMS and crossing the VMS demarcation line. This measure is intended to slow the rate of harvest of GB cod, while allowing continued access to GB haddock and GB yellowtail flounder within the Eastern U.S./Canada Area. This would help achieve optimum yield in the fishery during the 2005 fishing year. To allow the fishery to continue at its current harvest rate for GB cod could necessitate closure of the Eastern U.S./Canada Area before the full harvest of the GB haddock and GB yellowtail flounder TACs in place for this area, in order to ensure that the GB cod TAC is not exceeded during the 2005 fishing year.

This action also requires that all NE multispecies DAS vessels must use a haddock separator trawl when fishing in the Eastern U.S./Canada Area. This net is intended to allow vessels to continue to target the available GB haddock without catching substantial amounts of GB cod. Research highlighted in the environmental assessment prepared for Framework Adjustment 40–A to the FMP has shown that this net, if used properly, is capable of substantially reducing the amount of cod caught when compared to haddock. Vessels may continue to fish for GB yellowtail flounder in the Western U.S./Canada using any other gear allowed in the regulations under § 648.80(a) to fully harvest the U.S. portion of the TAC for GB yellowtail flounder. Therefore, this action is intended to prolong opportunities to fully harvest the GB haddock TAC in the Eastern U.S./Canada Area without compromising opportunities to fully harvest the GB yellowtail flounder TAC from the Western U.S./Canada Area.

## Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment for this action as notice and comment would be impracticable and contrary to the public interest. Given the relatively small GB cod TAC for the Eastern U.S./Canada Area during the 2005 fishing year and the very rapid rate at which the GB cod TAC has been harvested to date, it would be impracticable for NMFS to provide for prior notice and opportunity for public comment because this would likely prevent the agency from slowing the rate of GB cod catch within the Eastern U.S./Canada Area before the TAC is fully harvested. To allow vessels to continue fishing on GB cod at the recent catch rate during the period necessary to publish and receive comments on a proposed rule would result in the continued harvest of GB cod, potentially increasing the potential for the groundfish fishery to exceed the GB cod TAC for the Eastern U.S./Canada Area during the 2005 fishing year. Exceeding the GB cod TAC during the 2005 fishing year would require any overages to be deducted from the 2006 GB cod TAC for the Eastern U.S./Canada Area. This would result in decreased revenue for the NE multispecies fishery, increased economic impacts to vessels operating in the Eastern U.S./Canada Area, reduced opportunities to fully harvest the GB haddock and GB yellowtail flounder TACs in the Eastern U.S./Canada Area (i.e., through the increased possibility of premature closure of the Eastern U.S./Canada Area during the 2006 fishing year due to fully harvesting a reduced GB cod TAC in 2006), a reduced chance of achieving optimum yield in the groundfish fishery, and unnecessary delays to the rebuilding of this overfished stock.

For similar reasons, the Assistant Administrator finds good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the entire 30-day delayed effectiveness period for the measure limiting NE multispecies DAS vessels to one trip into the Eastern U.S./Canada Area per month and half of the 30-day delayed effectiveness period for the measure to require all NE multispecies DAS vessels to use a haddock separator trawl in the Eastern U.S./Canada Area. For the reasons specified above, a delay in the effectiveness of the access modification in this rule would prevent the agency from slowing the rate of GB cod catch within the Eastern U.S./Canada Area before the TAC is fully harvested and potentially exceeded during the 2005 fishing year. Any such delay could lead to the impacts to the fishing industry described above. Regulations at § 648.85(a)(3)(iii) require any NE multispecies DAS vessel fishing in the Eastern U.S./Canada Area to use either a haddock separator trawl or a modified flatfish net to facilitate the escapement of cod when targeting haddock or flatfish species, respectively. Because of the need to immediately slow the harvest of GB cod from the Eastern U.S./Canada Area, a full 30-day delayed effectiveness period for the gear restrictions implemented by this action would compromise the effectiveness of

this regulatory change. The use of a haddock separator trawl would allow the fishing industry to continue to target GB haddock and help better achieve optimum yield from the resource without compromising efforts that would enable the agency to slow GB cod harvest before the TAC is fully achieved and prevent the TAC from being exceeded. Although most vessels operating in the Eastern U.S./Canada Area already possess and use a haddock separator trawl, not every NE multispecies DAS vessel eligible to fish in this area is likely to possess a haddock separator trawl at this time. Therefore, it is necessary to allow these vessels the opportunity to purchase and install a haddock separator trawl prior to the effective date of this provision. A 15-day delayed effectiveness should provide the industry with sufficient opportunity to modify existing trawl gear to comply with the separator trawl requirement specified in this action, as the materials and expertise needed to modify existing gear are readily available. Finally, the rate of harvest of GB cod in the Eastern U.S./Canada Area is updated weekly on NMFS' Northeast Regional Office website at *http://www.nero.noaa.gov.* Accordingly, the public is able to obtain information that would provide at least some advanced notice of a potential action to slow the harvest rate or to close the Eastern U.S./Canada Area, thereby minimizing the need for a delayed effectiveness.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 7, 2005.

**Alan D. Risenhoover**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 05–13673 Filed 6–7–05; 2:23 pm]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 70, No. 132
Tuesday, July 12, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA 04–19684; Airspace Docket No. 04–ANM–24]**

## Proposed Revision of Class E Airspace; Herlong, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposal would revise Class E airspace at Herlong, CA. Additional controlled airspace is necessary to contain Instrument Flight Rules (IFR) aircraft during airborne holding at Amedee Army Air Field (AAF) due to weather below landing minimums, traffic congestion, or other operational reasons. Holding airspace is designated at specific altitudes and lateral boundaries within controlled airspace to provide a safe environment above obstacles. This holding pattern is an integral part of the new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at the Amedee AAF.

**DATES:** Comments must be received by August 26, 2005.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA 04–19684 Airspace Docket 04–ANM–24, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The Docket Office (telephone number 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue SW., Renton, WA 98055.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify Docket FAA 04–19684 Airspace Docket 04–ANM–24 and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket FAA 04–19684 Airspace Docket 04–ANM–24.'' The postcard will be date/time stamped and returned to the commenter.

### Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Office, Airspace Branch, 1601 Lind Avenue, SW., Renton, WA 98055. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking at 202–267–9677 to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

### The Proposal

This action proposes to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Amedee AAF, Herlong, CA. Additional Class E airspace is necessary to contain IFR aircraft within controlled airspace during airborne holding at Amedee AAF. Holding airspace is necessary when aircraft are delayed at Amedee AAF due to weather below landing minimums, traffic congestion, or other operational reasons. Holding airspace is designated at specific altitudes and lateral boundaries within controlled airspace to provide a safe environment above obstacles. This holding pattern is an integral part of the new RNAV GPS SIAP's at the Amedee AAF.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal

Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ANM CA E5 Herlong, CA [Revised]**

Amedee VOR/DME

(Lat. 40°16′04″ N, long. 120°09′07″ W)

That airspace extending upward from 700 feet above the surface of the earth within an area bounded by a line beginning at lat. 40°20′15″ N, long. 119°48′27″ W; to lat. 40°07′58″ N, long. 119°51′47″ W; to lat. 40°11′30″ N, long. 120°16′47″ W; to lat. 40°20′32″ N, long. 120°14′34″ W; thence to the point of beginning. That airspace extending upward from 1,200 feet above the surface of the earth beginning at lat. 40°00′00″ N, long. 120°00′00″ W; west to V452; to lat. 40°30′00″ N; east to lat. 40°30′00″ N, long. 119°16′00″ W; south to lat. 40°00′00″ N, long. 119°16′00″ W; west to point of beginning.

* * * * *

Issued in Seattle, Washington, on June 30, 2005.

**Danial T. Mawhorter,**

*Acting Area Director, Western En Route and Oceanic Operations.*

[FR Doc. 05–13661 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–13–M**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[R10–OAR–2005–WA–0006; FRL–7936–2]**

### Approval and Promulgation of Air Quality Implementation Plans; Washington; Correcting Amendments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** In this action, EPA is proposing minor corrections to typographical numbering errors that appeared in the notice approving the serious area plan for attainment of the annual and 24-hour $PM_{10}$ standards for Wallula, Washington, published on May 2, 2005. $PM_{10}$ is particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

**DATES:** Comments must be received on or before August 11, 2005.

**ADDRESSES:** Submit your comments, identified by Docket ID No. R10–OAR–2005–WA–0006, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Agency Web Site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

• *Mail:* Colleen Huck, Office of Air, Waste and Toxics, AWT–107, EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101.

• *Hand Delivery:* Colleen Huck, Office of Air, Waste and Toxics, AWT–107, 9th Floor, EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Colleen Huck at telephone number: (206) 553–1770, e-mail address: *Huck.Colleen@epa.gov,* fax number: (206) 553–0110, or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** For further information, please see the direct final action, of the same title, which is located in the Rules and Regulations section of this **Federal Register**. EPA is publishing this action without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. A detailed rationale for the correction is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule.

If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: June 24, 2005.

**Ronald A. Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 05–13553 Filed 7–11–05; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

**[R03–OAR–2005–VA–0009; FRL–7937–6]**

### Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Virginia; Control of Municipal Waste Combustor Emissions From Small Existing Municipal Solid Waste Combustor Units

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the Commonwealth of Virginia Department of Environmental Quality (DEQ) small municipal waste combustor plan (the plan) for implementing emission guideline (EG) requirements promulgated under the Clean Air Act (the Act). In the Final Rules section of this **Federal Register**, EPA is approving the plan, under the provisions of sections 111 and 129 of the Act, as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by August 11, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–VA–0009 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *http://wilkie.walter@epa.gov.*

D. Mail: R03–OAR–2005–VA–0009, Walter Wilkie, Chief, Air Quality Analysis, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to RME ID No. R03–OAR–2005–VA–0009. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** James B. Topsale, P.E., at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: June 29, 2005.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. 05–13699 Filed 7–11–05; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF DEFENSE

### 48 CFR Chapter 2

**[DFARS Case 2003–D085]**

### Defense Federal Acquisition Regulation Supplement; Material Inspection and Receiving Report

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update requirements for preparation of material inspection and receiving reports under DoD contracts. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before September 12, 2005, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2003-D085, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include DFARS Case 2003-D085 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Deborah Tronic, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, (703) 602–0289.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm.*

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes update DFARS Appendix F requirements for preparation of DD Form 250, Material Inspection and Receiving Report. The proposed changes include—

- Clarification of requirements for marking of shipments when a contractor's certificate of conformance is used as the basis for acceptance.
- Relocation of the requirement for the contractor to provide sufficient copies of DD Form 250, from F–701 to F–103.

• Clarification that use of Wide Area WorkFlow-Receipt and Acceptance electronic form satisfies DD Form 250 distribution requirements. This is consistent with the clause at DFARS 252.246–7000, Material Inspection and Receiving Report.

• Deletion of procedures for documenting Government contract quality assurance performed at a subcontractor's facility and for distribution and correction of DD Form 250–1 documents. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi.*

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule makes no significant change to DoD policy for preparation and use of material inspection and receiving reports. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D085.

**C. Paperwork Reduction Act**

The information collection requirements of DD Form 250, Material Inspection and Receiving Report, have been approved by the Office of Management and Budget under Control Number 0704–0248, for use through March 31, 2008.

**List of Subjects in 48 CFR Chapter 2**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR Appendix F to Chapter 2 as follows:

1. The authority citation for 48 CFR Appendix F to subchapter I continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**Appendix F to Chapter 2—Material Inspection and Receiving Report**

2. Appendix F to Chapter 2 is amended in Part 1, Section F–103, by revising paragraph (c) to read as follows:

**F–103 Use.**

* * * * *

(c) The contractor prepares the MIRR, except for entries that an authorized Government representative is required to complete. The contractor shall furnish sufficient copies of the completed form, as directed by the Government representative.

* * * * *

3. Appendix F to Chapter 2 is amended by revising Part 2 to read as follows:

## PART 2—CONTRACT QUALITY ASSURANCE ON SHIPMENTS BETWEEN CONTRACTORS

**F–201 Procedures.**

Follow the procedures at PGI F–201 for evidence of required Government contract quality assurance at a subcontractor's facility.

4. Appendix F to Chapter 2 is amended in Part 3, Section F–301, by revising paragraph (b)(21)(iii) in the first sentence and paragraph (b)(21)(iv)(D) introductory text to read as follows:

**F–301 Preparation instructions.**

* * * * *

(b) * * *

(21) * * *

(iii) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, the contractor shall enter in capital letters ''CERTIFICATE OF CONFORMANCE'' in Block 21a on the next line following the CQA and acceptance statements. * * *

(iv) * * *

(D) When Certificate of Conformance procedures apply, inspection or inspection and acceptance are at source, and the contractor's Certificate of Conformance is required, the contractor shall enter in capital letters ''CERTIFICATE OF CONFORMANCE'' as required by paragraph (b)(21)(iii) of this section.

* * * * *

5. Appendix F to Chapter 2 is amended in Part 4, Section F–401, by revising paragraph (a) to read as follows:

**F–401 Distribution.**

(a) The contractor is responsible for distributing the DD Form 250, including mailing and payment of postage. Use of Wide Area WorkFlow-Receipt and Acceptance electronic form satisfies the distribution requirements of this section.

* * * * *

6. Appendix F to Chapter 2 is amended by revising Part 7 to read as follows:

## PART 7—DISTRIBUTION OF THE DD FORM 250–1

**F–701 Distribution.**

Follow the procedures at PGI F–701 for distribution of DD Form 250–1.

**F–702 Corrected DD Form 250–1.**

Follow the procedures at PGI F–702 when corrections to DD Form 250–1 are needed.

[FR Doc. 05–13304 Filed 7–11–05; 8:45 am]

**BILLING CODE 5001–08–P**

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 204, 235, and 252

**[DFARS Case 2004–D010]**

### Defense Federal Acquisition Regulation Supplement; Export-Controlled Information and Technology

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements for preventing unauthorized disclosure of export-controlled information and technology under DoD contracts.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before September 12, 2005, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2004–D010, using any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

• Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.

• E-mail: *dfars@osd.mil.* Include DFARS Case 2004–D010 in the subject line of the message.

• Fax: (703) 602–0350.

• Mail: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

• Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602–0328.

**SUPPLEMENTARY INFORMATION:**

## A. Background

This proposed rule contains a new DFARS Subpart 204.73, Export-Controlled Information and Technology at Contractor, University, and Federally Funded Research and Development Center Facilities, and an associated contract clause. The proposed subpart provides general information on export control laws and regulations and requires contracting officers to ensure that contracts identify any export-controlled information and technology. The proposed clause is prescribed for use in solicitations and contracts for research and development or for services or supplies that may involve the use or generation of export-controlled information or technology. The clause requires the contractor to—

- Comply with all applicable laws and regulations regarding export-controlled information and technology;
- Maintain an effective export compliance program;
- Conduct initial and periodic training on export compliance controls; and
- Perform periodic assessments.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

## B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because all contractors, including small entities, are already subject to export-control laws and regulations. The requirements in this proposed rule are clarifications of existing responsibilities. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2004–D010.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 204, 235, and 252**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR parts 204, 235, and 252 as follows:

1. The authority citation for 48 CFR parts 204, 235, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 204—ADMINISTRATIVE MATTERS

2. Subpart 204.73 is added to read as follows:

### Subpart 204.73—Export-Controlled Information and Technology at Contractor, University, and Federally Funded Research and Development Center Facilities

Sec.
204.7301 Definition.
204.7302 General.
204.7303 Policy.
204.7304 Contract clause.

#### 204.7301 Definition.

*Export-controlled information and technology,* as used in this subpart, is defined in the clause at 252.204–70XX.

#### 204.7302 General.

Export control laws and regulations restrict the transfer, by any means, of certain types of information and technology. Any access to export-controlled information or technology by a foreign national or a foreign person anywhere in the world, including the United States, is considered an export to the home country of the foreign national or foreign person. For additional information relating to restrictions on export-controlled information and technology, see PGI 204.7302.

#### 204.7303 Policy.

The contracting officer shall ensure that contracts identify any export-controlled information and technology, as determined by the requiring activity.

#### 204.7304 Contract clause.

Use the clause at 252.204–70XX, Requirements Regarding Access to Export-Controlled Information and Technology, in solicitations and contracts for—

(a) Research and development; or

(b) Services or supplies that may involve the use or generation of export-controlled information or technology.

## PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

#### 235.071 [Redesignated]

3. Section 235.071 is redesignated as section 235.072.

4. A new section 235.071 is added to read as follows:

#### 235.071 Export-controlled information and technology at contractor, university, and Federally Funded Research and Development Center facilities.

For requirements relating to restrictions on export-controlled information and technology, see Subpart 204.73.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.204–70XX is added to read as follows:

#### 252.204–70XX Requirements Regarding Access to Export-Controlled Information and Technology.

As prescribed in 204.7304, use the following clause:

**Requirements Regarding Access to Export-Controlled Information and Technology (XXX 2005)**

(a) *Definition. Export-controlled information and technology,* as used in this clause, means information and technology that may only be released to foreign nationals or foreign persons in accordance with the Export Administration Regulations (15 CFR parts 730–774) and the International Traffic in Arms Regulations (22 CFR parts 120–130), respectively.

(b) In performing this contract, the Contractor may gain access to export-controlled information or technology.

(c) The Contractor shall comply with all applicable laws and regulations regarding export-controlled information and technology, including registration in accordance with the International Traffic in Arms Regulations.

(d) The Contractor shall maintain an effective export compliance program. The program must include adequate controls over physical, visual, and electronic access to export-controlled information and technology to ensure that access by foreign firms and individuals is restricted as required by applicable Federal laws, Executive orders, and regulations.

(1) The access control plan shall include unique badging requirements for foreign nationals and foreign persons and segregated work areas for export-controlled information and technology.

(2) The Contractor shall not allow access by foreign nationals or foreign persons to export-controlled information and technology without obtaining an export license, other authorization, or exemption.

(e) The Contractor shall—

(1) Conduct initial and periodic training on export compliance controls for those employees who have access to export-controlled information and technology; and

(2) Perform periodic assessments to ensure full compliance with Federal export laws and regulations.

(f) Nothing in the terms of this contract is intended to change, supersede, or waive any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

(1) The Export Administration Act of 1979 (50 U.S.C. App. 2401 as extended by Executive Order 13222);

(2) The Arms Export Control Act of 1976 (22 U.S.C. 2751);

(3) The Export Administration Regulations (15 CFR parts 730–774);

(4) The International Traffic in Arms Regulations (22 CFR parts 120–130);

(5) DoD Directive 2040.2, International Transfers of Technology, Goods, Services, and Munitions; and

(6) DoD Industrial Security Regulation (DoD 5220.22–R).

(g) The Contractor shall include the substance of this clause, including this paragraph (g), in all subcontracts for—

(1) Research and development; or

(2) Services or supplies that may involve the use or generation of export-controlled information or technology.

(End of clause)

**252.235–7002, 252.235–7003, 252.235–7010, and 252.235–7011 [Amended]**

6. Sections 252.235–7002, 252.235–7003, 252.235–7010, and 252.235–7011 are amended in the introductory text by removing ''235.071'' and adding in its place ''235.072''.

[FR Doc. 05–13305 Filed 7–11–05; 8:45 am]

**BILLING CODE 5001–08–P**

## DEPARTMENT OF DEFENSE

### 48 CFR Part 222

**[DFARS Case 2003–D019]**

### Defense Federal Acquisition Regulation Supplement; Labor Laws

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text regarding the application of labor laws to Government contracts. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before September 12, 2005, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2003-D019, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include DFARS Case 2003–D019 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Mr. Euclides Barrera, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Euclides Barrera, (703) 602–0326.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm.*

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes include—

- Relocation of text from DFARS 222.101–1, 222.101–3–70, and 222.101–4(a)(ii) to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi.* The relocated text contains internal procedures for contracting officers to follow when dealing with labor relations matters and preparing reports on labor disputes.
- Deletion of DFARS 222.404–2 because it is no longer applicable.
- Deletion of DFARS 222.404–3 and 222.404–11 because the coverage in these sections is already provided by the FAR or internal agency procedures.
- Partial relocation of DFARS 222.406–8 to PGI. The relocated text prescribes internal procedures that contracting officers must follow in conducting labor investigations and preparing respective reports.
- Deletion of unnecessary text at DFARS 222.407.
- Deletion of DFARS 222.804–2 and 222.805 because the FAR provides sufficient coverage.
- Relocation of DoD internal procedures from DFARS 222.807 to PGI.
- Deletion of unnecessary text at DFARS 222.1003–7.
- Relocation of DoD internal procedures from DFARS 222.1008–2 and 222.1014 to PGI.
- Revision of DFARS Subpart 222.13 to update section headings and references for consistency with the corresponding FAR subpart; and relocation of DoD internal procedures to PGI.
- Deletion of DFARS 222.1406(1) because adequate coverage is provided in the FAR.
- Deletion of unnecessary text at DFARS 222.7100 and 222.7200.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

#### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule deletes redundant or obsolete language, removes procedural or DoD internal guidance, and relocates to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), information and internal DoD procedures that do not have a significant impact on the public. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD will also consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D019.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 222**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR part 222 as follows:

1. The authority citation for 48 CFR part 222 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Section 222.101–1 is revised to read as follows:

**222.101–1 General.**

Follow the procedures at PGI 222.101–1 for referral of labor relations matters to the appropriate authorities.

3. Section 222.101–3–70 is revised to read as follows:

**222.101–3–70 Impact of labor disputes on defense programs.**

(a) Each department and agency shall determine the degree of impact of potential or actual labor disputes on its own programs and requirements. For guidance on determining the degree of impact, see PGI 222.101–3–70(a).

(b) Each contracting activity shall obtain and develop data reflecting the impact of a labor dispute on its requirements and programs. Upon determining that the impact of the labor dispute is significant, the head of the contracting activity shall submit a report of findings and recommendations to the labor advisor in accordance with departmental procedures. This reporting requirement is assigned Report Control Symbol DD–AT&L(AR)1153 and must include the information specified at PGI 222.101–3–70(b).

4. Section 222.101–4 is amended by revising paragraph (a)(ii) to read as follows:

**222.101–4 Removal of items from contractors' facilities affected by work stoppages.**

(a) * * *

(ii) Upon the recommendation of the labor advisor, provide a written request for removal of the material to the cognizant contract administration office. Include in the request the information specified at PGI 222.101–4(a)(ii).

* * * * *

5. Section 222.102–1 is revised to read as follows:

**222.102–1 Policy.**

(1) Direct all inquiries from contractors or contractor employees regarding the applicability or interpretation of Occupational Safety and Health Act (OSHA) regulations to the Department of Labor.

(2) Upon request, provide the address of the appropriate field office of the Occupational Safety and Health Administration of the Department of Labor.

(3) Do not initiate any application for the suspension or relaxation of labor requirements without prior coordination with the labor advisor. Any requests for variances or alternative means of compliance with OSHA requirements must be approved by the Occupational Safety and Health Administration of the U.S. Department of Labor.

**222.404–2 through 222.404–11 [Removed]**

6. Sections 222.404–2 through 222.404–11 are removed.

7. Section 222.406–8 is amended by revising paragraph (a), the heading of paragraph (c), and paragraph (d) to read as follows:

**222.406–8 Investigations.**

(a) Before beginning an investigation, the investigator shall inform the contractor of the general scope of the investigation, and that the investigation will include examining pertinent records and interviewing employees. In conducting the investigation, follow the procedures at PGI 222.406–8(a).

(c) *Contractor notification.*

* * * * *

(d) *Contracting officer's report.* Forward a detailed enforcement report or summary report to the agency head in accordance with agency procedures. Include in the report, as a minimum, the information specified at PGI 222.406–8(d).

**222.407 [Removed]**

8. Section 222.407 is removed.

**222.804–2 and 222.805 [Removed]**

9. Sections 222.804–2 and 222.805 are removed.

10. Section 222.807 is revised to read as follows:

**222.807 Exemptions.**

(c) Follow the procedures at PGI 222.807(c) when submitting a request for an exemption.

**222.1003–7 [Removed]**

11. Section 222.1003–7 is removed.

12. Section 222.1008–2 is revised to read as follows:

**222.1008–2 Preparation of SF 98a.**

Follow the procedures at PGI 222.1008–2 regarding use of the Service Contract Act Directory of Occupations when preparing the SF 98a.

13. Section 222.1014 is revised to read as follows:

**222.1014 Delay of acquisition dates over 60 days.**

Follow the procedures at PGI 222.1014 for submission of update requests to the Wage and Hour Division.

14. Subpart 222.13 is revised to read as follows:

## Subpart 222.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

Sec.

222.1305 Waivers.
222.1308 Complaint procedures.
222.1310 Solicitation provision and contract clauses.

**222.1305 Waivers.**

(c) Follow the procedures at PGI 222.1305(c) for submission of waiver requests.

**222.1308 Complaint procedures.**

The contracting officer shall—

(1) Forward each complaint received as indicated in FAR 22.1308; and

(2) Notify the complainant of the referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

**222.1310 Solicitation provision and contract clauses.**

(a)(1) Use of the clause at FAR 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, with its paragraph (c), Listing Openings, also satisfies the requirement of 10 U.S.C. 2410k.

15. Section 222.1406 is revised to read as follows:

**222.1406 Complaint procedures.**

The contracting officer shall notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

**222.7100 and 222.7200 [Removed]**

16. Sections 222.7100 and 222.7200 are removed.

[FR Doc. 05–13307 Filed 7–11–05; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 225 and 249

**[DFARS Case 2003–D046]**

### Defense Federal Acquisition Regulation Supplement; Contract Termination

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to termination of contracts. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before September 12, 2005, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2003–D046, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2003–D046 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Deborah Tronic, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, (703) 602–0289.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm.*

This proposed rule is a result of the DFARS Transformation initiative. The proposed DFARS changes—

- Relocate text on termination of Canadian Commercial Corporation contracts, from Part 225, Foreign Acquisition, to a more appropriate location in Part 249, Termination of Contracts;
- Delete unnecessary cross-references; and
- Delete text on preparation of contract termination status reports, completion of forms to document termination settlements, preparation of settlement negotiation memoranda, and congressional notification of significant contract terminations. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi.*

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

#### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule makes no significant change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D046.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 48 CFR Parts 225 and 249

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR parts 225 and 249 as follows:

1. The authority citation for 48 CFR parts 225 and 249 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 225—FOREIGN ACQUISITION

2. Section 225.870–6 is revised to read as follows:

**225.870–6 Termination procedures.**

When contract termination is necessary, follow the procedures at 249.7000.

## PART 249—TERMINATION OF CONTRACTS

3. Sections 249.105–1 and 249.105–2 are revised to read as follows:

**249.105–1 Termination status reports.**

Follow the procedures at PGI 249.105–1 for reporting status of termination actions.

**249.105–2 Release of excess funds.**

See PGI 249.105–2 for guidance on recommending the release of excess funds.

**249.106 through 249.108–4 [Removed]**

4. Sections 249.106 through 249.108–4 are removed.

5. Sections 249.109–7 and 249.110 are revised to read as follows:

**249.109–7 Settlement by determination.**

Follow the procedures at PGI 249.109–7 for settlement of a convenience termination by determination.

**249.110 Settlement negotiation memorandum.**

Follow the procedures at PGI 249.110 for preparation of a settlement negotiation memorandum.

6. Section 249.7000 is amended by revising paragraph (a)(3) and adding paragraphs (e) through (g) to read as follows:

**249.7000 Terminated contracts with Canadian Commercial Corporation.**

(a) * * *

(3) The Canadian Supply Manual, Chapter 11, Section 11.146, available at *http://www.pwgsc.gc.ca/acquisitions/text/sm/sm-e.html.*

* * * * *

(e) The Canadian Commercial Corporation will continue administering contracts that the U.S. contracting officer terminates.

(f) The Canadian Commercial Corporation will settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government.

(g) The U.S. agency administering the contract with the Canadian Commercial Corporation shall provide any services required by the Canadian Commercial Corporation, including disposal of inventory, for settlement of any subcontracts placed in the United States. Settlement of such U.S. subcontracts will be in accordance with this regulation.

7. Section 249.7001 is revised to read as follows:

**249.7001 Congressional notification on significant contract terminations.**

Congressional notification is required for any termination involving a reduction in employment of 100 or more contractor employees. Proposed terminations must be cleared through department/agency liaison offices before release of the termination notice, or any information on the proposed termination, to the contractor. Follow the procedures at PGI 249.7001 for congressional notification and release of information.

[FR Doc. 05–13306 Filed 7–11–05; 8:45 am]
BILLING CODE 5001–08–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List a Distinct Population Segment of the Roundtail Chub in the Lower Colorado River Basin and To List the Headwater Chub as Endangered or Threatened With Critical Habitat

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list a distinct population segment of the roundtail chub (*Gila robusta*) in the Lower Colorado River basin, and to list the headwater chub (*G. nigra*) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act). We find that the petition presented substantial scientific and commercial data indicating that these listings may be warranted. Therefore, we are initiating a status review to determine if listing these species is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding these species. The petition also asked the Service to designate critical habitat for these species. The Act does not allow petitions for designation of critical habitat. However, any determinations on critical habitat will be made if and when a listing action is initiated for these species.

**DATES:** The finding announced in this document was made on June 30, 2005. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by September 12, 2005.

**ADDRESSES:** Data, information, comments, or questions concerning this petition and our finding should be submitted to the Field Supervisor, Arizona Ecological Services Office, 2321 West Royal Palm Drive, Suite 103, Phoenix, Arizona. The petition, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Steve Spangle, Field Supervisor, Arizona Ecological Services Office at the above address (telephone 602–242–0210; facsimile 602–242–2513).

**SUPPLEMENTARY INFORMATION:**

### Public Information Solicited

When we make a finding that substantial information is presented to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the roundtail and headwater chubs. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the status of the roundtail and headwater chubs. We are seeking information regarding the two species' historical and current status and distribution, their biology and ecology, ongoing conservation measures for the species and their habitat, and threats to the species and their habitat.

If you wish to comment or provide information, you may submit your comments and materials concerning this finding to the Field Supervisor (*see* **ADDRESSES**).

Our practice is to make comments and materials provided, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your submission. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the address provided under **ADDRESSES.**

### Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on all information available to us at the time we make the finding. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

In making this finding, we relied on information provided by the petitioners and evaluated that information in accordance with 50 CFR 424.14(b). Our process of coming to a 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether

the information in the petition meets the ''substantial information'' threshold.

We do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, as the Act and regulations contemplate, in coming to a 90-day finding, we accept the petitioner's sources and characterizations of the information unless we have specific information to the contrary.

Our finding considers whether the petition states a reasonable case for listing on its face. Thus, our finding expresses no view as to the ultimate issue of whether the species should be listed. We reach a conclusion on that issue only after a more thorough review of the species' status. In that review, which will take approximately 9 months, we will perform a rigorous, critical analysis of the best available scientific and commercial information, not just the information in the petition. We will ensure that the data used to make our determination as to the status of the species is consistent with the Act and the Information Quality Act (44 U.S.C. 3504(d)(1) and 3516 note).

**Petition**

On April 14, 2003, we received a petition dated April 2, 2003, requesting that we list a distinct population segment (DPS) of the roundtail chub in the Lower Colorado River basin as endangered or threatened, that we list the headwater chub as endangered or threatened, and that critical habitat be designated concurrently with the listing for both species. The petition, submitted by the Center for Biological Diversity (Center), was clearly identified as a petition for a listing rule, and it contained the names, signatures, and addresses of the requesting parties. Included in the petition was supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, and potential causes of decline. We acknowledged the receipt of the petition in a letter to Mr. Noah Greenwald, dated June 4, 2003. In that letter, we also advised the petitioners that, due to funding constraints in fiscal year 2003, we would not be able to begin processing the petition in a timely manner.

On May 18, 2004, the Center sent a Notice of Intent to sue, contending that the Service had violated the Act by failing to make a timely 90-day finding on the petition to list a distinct population segment of the roundtail chub in the Lower Colorado River basin, and the headwater chub. On September 20, 2004, the Center filed a complaint against the Secretary of the Interior and the Service for failure to make a 90-day petition finding under section 4 of the Act. In a stipulated settlement agreement we agreed to submit a 90-day finding to the **Federal Register** by June 30, 2005 [*Center for Biological Diversity* v. *Norton,* CV–04–496–TUC–CKJ (D. AZ)]. The settlement agreement was signed and adopted by the District Court for the District of Arizona on May 5, 2005. This notice constitutes our 90-day finding for the petition to list a DPS of the roundtail chub in the Lower Colorado River basin, and to list the headwater chub, as endangered or threatened, pursuant to the Court's order.

**Biology and Distribution**

The general background information provided in this section below is based on information in the petition and in our files.

The roundtail and headwater chubs are both cyprinid fish (members of Cyprinidae, the minnow family) with streamlined body shapes. Color in roundtail chub is usually olive-gray to silvery, with the belly lighter, and sometimes with dark blotches on the sides; headwater chub color is usually dark gray to brown overall, with silvery sides that often have faded lateral stripes. Roundtail chub are generally 25 to 35 centimeters (cm) [9 to 14 inches (in)] in length, but can reach 50 cm (20 in). Headwater chub are quite similar in appearance to roundtail chub, although they are generally smaller, likely due to the smaller streams in which they occur (Minckley 1973; Sublette *et al.* 1990; Propst 1999; Minckley and Demaris 2000; Voeltz 2002).

Baird and Girard first described roundtail chub from specimens collected from the Zuni River in northeastern Arizona and northwestern New Mexico (Baird and Girard 1853). Headwater chub was first described from Ash Creek and the San Carlos River in east-central Arizona in 1874 (Cope and Yarrow 1875). The taxonomy of these two species has undergone numerous revisions (see Miller 1945; Holden 1968; Rinne 1969; Holden and Stalnaker 1970; Rinne 1976; Smith *et al.* 1977; DeMarais 1986; Rosenfeld and Wilkinson 1989; DeMarais 1992; Dowling and DeMarais 1993; Douglas *et al.* 1998; Minckley and DeMarais 2000; Gerber *et al.* 2001); however, both are now recognized as distinct species (Minckley and DeMarais 2000; Nelson *et al.* 2004). A summary of the taxonomic history can be found in Voeltz (2002).

The historical distribution of headwater and roundtail chub in the lower Colorado River basin is poorly documented, due to the paucity of early collections and the widespread anthropogenic (manmade) changes to aquatic ecosystems beginning in the mid 19th century [*i.e.*, habitat alteration and nonnative species introductions (Girmendonk and Young 1997)]. Both of these species were historically considered common throughout their respective ranges (Minckley 1973; Holden and Stalnaker 1975; Propst 1999). Voeltz (2002) estimated historical distribution based on museum collection records, agency database searches, literature searches, and discussion with biologists.

Roundtail chub in the lower Colorado River basin was historically found in (1) the Gila and Zuni Rivers in New Mexico and (2) the Black, Colorado, Little Colorado, Bill Williams, Gila, San Francisco, San Carlos, San Pedro, Salt, Verde, White, and Zuni Rivers in Arizona, as well as in numerous tributaries within those basins. Voeltz (2002) estimated the lower Colorado River basin roundtail chub historically occupied approximately 4,500 kilometers (km) [2,796 miles (mi)] of rivers and streams in Arizona and New Mexico. A form that until recently was considered to be the roundtail chub outside the Colorado River basin in Mexico is now considered a different species, *Gila minacae* (S. Norris, California State University Channel Islands, pers. comm. 2004).

Roundtail chub in the lower Colorado River basin in Arizona currently occurs in two tributaries of the Little Colorado River (Chevelon and East Clear Creeks); several tributaries of the Bill Williams River basin (Boulder, Burro, Conger, Francis, Kirkland, Sycamore, and Trout Creeks); the Salt River and two of its tributaries (Cherry Creek and Salome Creek); the Verde River and four of its tributaries (Fossil, Oak, West Clear, and Wet Beaver Creeks); Aravaipa Creek; and in New Mexico, in the upper Gila River (Voeltz 2002).

Roundtail chub in the Lower Colorado River basin are found in cool to warm waters of mid-elevation rivers and streams, and often occupy the deepest pools and eddies of large streams (Minckley 1973; Brouder *et al.* 2000; Minckley and DeMarais 2000; Bezzerides and Bestgen 2002). Although roundtail chub are often associated with various cover features, such as boulders, vegetation, and undercut banks, they are less apt to use cover than congeneric species (of the same genus) such as the headwater chub and Gila chub (*Gila intermedia*) (Minckley and DeMarais 2000). Water temperatures for the species vary between 14° and 24° Celsius (C) (57° and 75° Fahrenheit (F)); spawning has been documented at 18°

and 22° C (64° and 72° F) (Bestgen 1985; Kaeding *et al.* 1990; Brouder *et al.* 2000). Spawning occurs from February through June in pool, run, and riffle habitats, with slow to moderate water velocities (Neve 1976; Bestgen 1985; Propst 1999; Brouder *et al.* 2000). Roundtail chub are omnivores, consuming aquatic and terrestrial invertebrates, aquatic vegetation, detritus, and occasionally vertebrates (Propst 1999; Schreiber and Micnkley 1981).

Historically, headwater chub likely occurred in a number of tributaries of the Verde River, most of the Tonto Creek drainage, much of the San Carlos River drainage, and parts of the upper Gila River in New Mexico (Voeltz 2002). Voeltz (2002) estimated that headwater chub historically occupied approximately 500 km (312 mi) in Arizona and New Mexico. The species currently occurs in the same areas, but has a smaller distribution. In Arizona, headwater chub currently occur in four tributaries of the Verde River (Fossil Creek, the East Verde River, Wet Bottom Creek, and Deadman Creek); Tonto Creek and eight of its tributaries (Buzzard Roost, Gordon, Gun, Haigler, Horton, Marsh, Rock and Spring Creeks); and in New Mexico, in the upper East Fork, lower Middle Fork, and lower West Forks of the Gila River (Voeltz 2002). Headwater chub also appear to have been documented recently in the San Carlos River drainage, though their status in that system is unknown (Minckley and DeMarais 2000; Voeltz 2002).

Headwater chub occur in the middle to upper reaches of moderately sized streams (Minckley and DeMarais 2000). Bestgen and Propst (1989) examined status and life history in the Gila River drainage in New Mexico and found that headwater chubs occupied tributary and mainstem habitats in the upper Gila River at elevations of 1,325 meters (m) (4,347 feet (ft)) to 2,000 m (6,562 ft). Maximum water temperatures of headwater chub habitat vary between 20° to 27° C (68° and 81° F), and minimum water temperatures were around 7° C (45° F) (Bestgen and Propst 1989; Barrett and Maughan 1994). Typical adult microhabitat consists of nearshore pools adjacent to swifter riffles and runs over sand and gravel substrate, with young of the year and juvenile headwater chub using smaller pools and areas with undercut banks and low current (Anderson and Turner 1978; Bestgen and Propst 1989). Spawning in Fossil Creek occurred in spring and was observed in March in pool-riffle areas with sandy-rocky substrates (Neve 1976). Neve (1976) reported that the diet of headwater chub included aquatic insects, ostracods (minute aquatic crustaceans), and plant material.

**Previous Federal Actions**

We placed the headwater chub (as *G. r. grahami*) on the list of candidate species as a category 2 species on December 30, 1982 (47 FR 58454). Category 2 species were those for which existing information indicated that listing was possibly appropriate, but for which substantial supporting biological data to prepare a proposed rule were lacking. On January 6, 1989, the roundtail chub (as *G. robusta*, which at that time included headwater chub) was placed into category 2 (54 FR 554). Due to lack of funding to gather existing information on these fishes, both species remained as category 2 candidate species through the 1991 (56 FR 58804; November 21, 1991) and 1994 (59 FR 58982; November 15, 1994) Candidate Notices of Review. In the 1996 Candidate Notice of Review (61 FR 7596; February 28, 1996), the use of category 2 candidates was discontinued, and the roundtail and headwater chub were no longer recognized as candidates.

**Distinct Vertebrate Population Segment**

The petitioners have asked us to consider designating a DPS for the roundtail chub in the lower Colorado River basin. Under the Act, we consider for listing any species, subspecies, or, DPSs of vertebrate species/subspecies, if information is sufficient to indicate that such action may be warranted. To implement the measures prescribed by the Act and its Congressional guidance, we developed a joint policy with the National Oceanic and Atmospheric Administration entitled Policy Regarding the Recognition of Distinct Vertebrate Population (61 FR 4721; February 7, 1996) (DPS policy) to clarify our interpretation of the phrase ''distinct population segment of any species of vertebrate fish or wildlife'' for the purposes of listing, delisting, and reclassifying species under the Act. Under our DPS policy, we consider three elements in a decision regarding the status of a possible DPS as endangered or threatened under the Act. These are applied similarly for addition to the lists of endangered and threatened wildlife and plants, for reclassification, and for removal. The elements are: (1) The population segment's discreteness from the remainder of the taxon to which it belongs; (2) the population segment's significance to the taxon to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (*i.e.*, when treated as if it were a species, is the population segment endangered or threatened?). Our DPS policy further recognizes it may be appropriate to assign different classifications (*i.e.*, threatened or endangered) to different DPSs of the same vertebrate taxon (61 FR 4721; February 7, 1996).

**Discreteness**

The DPS policy's standard for discreteness allows an entity given DPS status under the Act to be adequately defined and described in some way that distinguishes it from other representatives of its species. A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: (1) it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) it is delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist.

**Information Provided in the Petition**

The petitioners state that the roundtail chub meets the standard for discreteness because populations in the upper and lower Colorado River basins appear to have been separate in historical times, and this is supported by current information from molecular investigations.

The historical range of roundtail chub included both the upper and lower Colorado River basins in the States of Wyoming, Utah, Colorado, New Mexico, Arizona, and Nevada, and likely Baja California and Sonora, Mexico (Propst 1999; Bezzerides and Bestgen 2002; Voeltz 2002). Currently this species occurs in the upper basin in Wyoming, Utah, and Colorado. In the lower basin it currently occurs in New Mexico and Arizona. The petitioners maintain that, although the populations in the upper and lower Colorado River basins were presumed to have intermixed with each other in the mainstem Colorado River, historical collections and genetic evidence show that there were and are, in fact two discrete populations, one in each basin.

Further, the petitioners cite Bezzerides and Bestgen (2002), who concluded that, historically, the distribution of roundtail chub was continuous in the Colorado River basin

via the mainstem Colorado River, although they found that two discrete population centers were evident, one in each of the lower and upper basins. Although early surveys were infrequent, only four records of roundtail chub are documented in the mainstem Colorado River between the two basins (Voeltz 2002). Based on this information, Minckley (1979) and C.O. Minckley (1996) considered roundtail chub rare in the Colorado River mainstem. Thus, the petitioners conclude that the historical situation of roundtail chub in the Colorado River basin appears to be that there were two population centers, one each in the upper and lower basins, likely with very little mixing.

The petitioners argue that discreteness of the populations of roundtail chub in each basin also appears to be supported by molecular investigations. Allozymes and mitochondrial DNA (mtDNA) sequence variation of roundtail chub in the two basins are significantly different (DeMarais 1992; Dowling and DeMarais 1993; Minckley and DeMarais 2000; Gerber *et al.* 2001). Further, the petitioners note that Gerber *et al.* (2001) found that mtDNA of lower basin roundtail chub was entirely absent from roundtail chub in the upper basin.

**Significance**

Under our DPS policy, in addition to our consideration that a population segment is discrete, we consider its biological and ecological significance to the taxon to which it belongs, within the context that the DPS policy be used ''sparingly'' while encouraging the conservation of genetic diversity (61 FR 4721; February 7, 1996). This consideration may include, but is not limited to, evidence of the persistence of the discrete population segment in an ecological setting that is unique for the taxon; evidence that loss of the population segment would result in a significant gap in the range of the taxon; evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; and evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

**Information Provided in the Petition**

The petitioners maintain that roundtail chub in the lower Colorado River basin should be considered significant under our DPS policy for several reasons. They state that roundtail chub in the lower basin occur in an ecological setting unique for the species based on differences in various ecoregion variables, such as hydrograph, sediment, substrate, nutrient flow, cover, and water chemistry (Burkham 1970; Sellers 1974; Carlson and Muth 1989; Miller and Hubert 1990; Minckley and Rinne 1991; Leopold 1994; Bailey 1995; Rosgen 1996). The petitioners maintain that loss of the lower Colorado River DPS of roundtail chub would result in a significant gap in the range of the taxon because this population segment constitutes a majority of the species' range in two states (Arizona and New Mexico) and all of several major river systems, including the Little Colorado, Bill Williams, and Gila River basins. They also cite data that indicate the lower Colorado River population of roundtail chub is significant in that it differs markedly from other populations of the species in its genetic characteristics. As mentioned above, they note that allozymes and mitochondrial DNA (mtDNA) sequence variation of roundtail chub in the two basins are significantly different (DeMarais 1992; Dowling and DeMarais 1993; Minckley and Demarais 2000; Gerber *et al.* 2001), and cite that Gerber *et al.* (2001) found that mtDNA of lower basin roundtail chub was entirely absent from roundtail chub in the upper basin. Based on this information, the petitioners argue that the lower Colorado River roundtail chub population offers unique opportunities to uncover scientific information available through study of its unique evolutionary trajectory. The petitioners also argue that there are differences in status and management needs between the populations in the two basins (the upper basin has fewer people; has less extreme threats to aquatic habitats, in part because there is more water and less demand for water; and has more significant Federal programs in place to protect and recover native fishes).

**Evaluation of Information in the Petition**

Based on the data presented in the petition, there appears to be substantial scientific information that roundtail chub populations in the lower Colorado River warrant further review of whether they are discrete from the rest of the species' range and that they may be significant to the taxon as a whole, as defined in our DPS policy.

According to our DPS policy, if a population of species if found to be both discrete and significant, we then evaluate the conservation status of the population in relation to the listing factors found in section 4(a)(1) of the Act. Our assessment of the conservation status of the population of the roundtail chub in the lower Colorado River basin based on the information provided in the petition is provided in the ''Discussion'' section below.

**Discussion**

In the following discussion, we discuss each of the major assertions made in the petition, organized by the listing factors found in section 4(a)(1) of the Act. Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal list of endangered and threatened species. A species may be determined to be an endangered or threatened species if it is threatened by one or more of the five factors described in section 4(a)(1) of the Act and meets either the definition of endangered or threatened pursuant to section 3 of the Act. The five listing factors are: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence.

This 90-day finding is not a status assessment of either species and does not constitute a status review under the Act. The discussion presents information provided in the petition related to the factors used for evaluation of listing pursuant to section 4(a)(1) of the Act for both species, the population of the roundtail chub in the Lower Colorado River Basin and the headwater chub.

**A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range**

*Geographic Range and Status*

Information Provided in the Petition

The petitioners claim that the decline of the roundtail chub was noted as early as 1961 (Miller 1961), and that recent status reviews of both headwater and roundtail chub (Bestgen 1985; Girmendonk and Young 1997; Bezzarides and Bestgen 2002; Voeltz 2002) led our Desert Fishes Recovery team to recommend that both species be listed as endangered on numerous occasions. They also cite the recent Arizona Game and Fish Department (Voeltz 2002) review of these species, which found declines from historical levels and indicated that many of the remaining populations were vulnerable to extirpation from various threats. Of the 40 recently documented populations of roundtail chub in the lower Colorado River basin, Voeltz (2002) found that 6

were stable-threatened, 13 were unstable-threatened, 10 were extirpated, and 11 populations were of unknown status. Voeltz (2002) considered a population stable if the species was abundant or common and data over 5–10 years indicated a recruiting population; secure if no obvious threats were apparent; and threatened if nonnative aquatic species were present or serious current or future habitat-altering land or water uses were identified.

Of the 19 recently documented populations of headwater chub, Voeltz (2002) found that 6 were stable-threatened, 6 were unstable-threatened, 1 was stable-secure, 3 were extirpated, and 3 populations were of unknown status. Deadman Creek, the one population that Voeltz considered stable-secure, has since been invaded by nonnative green sunfish (*Lepomis cyanellus*); thus that population should now be considered stable-threatened (Voeltz, Arizona Game and Fish Department, pers. comm. 2003).

*Habitat*

Information Provided in the Petition

The petitioners state that roundtail and headwater chub are threatened by a variety of actions: livestock grazing, water withdrawal, dam and dam operation, roads and logging, recreation, mining, urban development, channelization, and the cumulative effects of these actions. The petitioners contend that habitat in substantial portions of the range of these species has been significantly altered by these factors, and they contend that remaining areas known to be occupied by roundtail and headwater chub are threatened by additional loss and degradation of habitat (Minckley 1985; Bestgen and Propst 1989; Bezzerides and Bestgen 2002; Tellman *et al.* 1997; Voeltz 2002).

Summary of Habitat Threats and Evaluation of Information in the Petition

The petitioners have provided substantial scientific information that a variety of anthropogenic activities that affect the habitat of roundtail and headwater chub in the lower Colorado River basin either singly or in combination with one another, may be destroying or modifying roundtail and headwater chub habitat.

**B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes**

*Information Provided in the Petition*

The petitioners do not provide information suggesting that overutilization for commercial, recreational, scientific, or educational purposes is a threat to either the roundtail or headwater chubs; however, they do consider overutilization in their analysis of the inadequacy of existing regulatory mechanisms and in their analysis of recreation as form of habitat loss.

*Evaluation of Information in the Petition*

Our response to these issues is included within those sections of our analysis.

**C. Disease or Predation**

*Information Provided in the Petition*

The petitioners contend that nonnative fish that compete with and/or prey on roundtail and headwater chub are a serious and persistent threat to the continued existence of these species (U.S. Fish and Wildlife Service 1999 a, b, 2001a, b), and they cite a number of examples of nonnative fish species negatively affecting native fish populations. They also claim that largemouth bass, smallmouth bass, green sunfish, flathead catfish, channel catfish, black bullhead (*Ameiurus melas*), and yellow bullhead are all known or suspected to prey on native fish and are to some degree sympatric (occupying the same or overlapping geographic areas without interbreeding) with either roundtail or headwater chub (Girmendonk and Young 1997; Voeltz 2002).

The petitioners contend that most streams within the range of the roundtail and headwater chub contain multiple nonnative species (U.S. Fish and Wildlife Service 2001a and b), and that aquatic nonnative species continue to be introduced into streams in Arizona, likely through a variety of mechanisms, both intentional and accidental, that include interbasin water transfer, sport stocking, aquaculture, aquarium releases, bait-bucket release (release of fish used as bait by anglers), and biological control (Rosen *et al.* 1995; U.S. Fish and Wildlife Service 2001). The petitioners note that nonnatives are present and considered a threat to remnant populations of roundtail or headwater chub in 28 of the 30 streams in which they occur (Voeltz 2002).

The petitioners also contend that disease, and especially parasites, may be a threat and cite the following information. Roundtail and headwater chub have been found to be infected by a number of parasites, including protozoans (*Ichthyophthirius multifiliis*), trematodes (*Ornithodiplostomum ptychocheilus, Clinostomum marginatum,* and *Plagioporus* species), cestodes (*Isoglaridacris bulboocirrus*), nematodes (*Dacnitoides* species, *Rhabdochona decaturensis*, and *Rhabdochona* species), and anchor worms (*Lernaea* species) (Girmendonk and Young 1997; James 1968; Mpoame 1981; Voeltz 2002).

*Evaluation of Information in the Petition*

The petition provides substantial scientific information that predation and disease is a factor that may threaten the continued existence of the roundtail and headwater chubs.

**D. Inadequacy of Existing Regulatory Mechanisms**

*Information Provided in the Petition*

The petitioners state that there are at present no specific Federal protections for roundtail or headwater chub, and generalized Federal protections found in Forest plans, Clean Water Act dredge and fill regulations for streams, and other statutory, regulatory, or policy provisions have been inadequate to check the rapid decline of these two fishes. The petitioners cite Doremus and Pagel (2001) who found that State, local, and private laws and regulations were of substantially less effectiveness at conservation of imperiled species than the Act and concluded that ''Background law generally does not protect species against either of these two primary threats (habitat degradation and exotic species). Even the Act provides little protection against exotic species, but it does provide the strongest currently available protection against habitat degradation.'' The petitioners review a substantial body of Federal, State, and Tribal statutes, regulations, and planning work against conservation of roundtail and headwater chubs and their habitat, and contend that these also indicate the plight of roundtail and headwater chub can be remedied only through Federal listing under the Act.

As an example, the petitioners examined management on 58 U.S. Forest Service allotments with known roundtail or headwater chub populations and contend that the agency failed to consider the effects of livestock grazing on these species on 23 allotments, and that livestock grazing was considered to potentially impact these species or their habitat on 20 of the other 35; in two of these cases the U.S. Forest Service concluded that grazing would ''eventually trend the species toward federal listing.'' They also contend that of the 58 allotments that contained these species, poor riparian and watershed conditions were

found on 40 of the 58 allotments, and only four allotments were noted as having healthy riparian conditions.

*Evaluation of Information in the Petition*

The petition provides substantial information that relates to the inadequacies of existing regulatory mechanisms to address significant threats to roundtail and headwater chub throughout their range.

**E. Other Natural or Manmade Factors Affecting the Species' Continued Existence**

*Information Provided in the Petition*

The petitioners contend that the probability of catastrophic stochastic (random) events is exacerbated by a century of livestock grazing and fire suppression that have led to unnaturally high fuel loadings (Cooper 1960; Covington and Moore 1994; Swetnam and Baison 1994; Touchan *et al.* 1995; White 1985). Forests that once frequently burned at low intensities now rarely burn, but when they do, it is often at stand-replacing intensity (Covington and Moore 1994). Fires in the southwest frequently occur during the summer monsoon season. As a result, fires are often followed by rain that washes ash-laden debris into streams (Rinne 1996). It is such debris, rather than the fires themselves, that impacts and/or devastates fish populations. For example, the petition states that the 1990 Dude Fire was known to severely impact fish in the East Verde River. Voeltz (2002) states: ''Fish populations within the East Verde drainage were heavily impacted following the Dude Fire in 1990. Runoff from storms following the fire washed ash and sediments off of the burned slopes into the system, reducing or eliminating fish populations in many of the small tributary streams in the area of the fire.''

The petitioners also maintain that extensive human alteration of watersheds that has occurred over the past 150 years in the lower Colorado River basin has resulted in changes in the hydrologic regimes of the rivers and in the geomorphology of the river channels. This human-initiated change is exacerbated by the naturally highly variable climate of the area. Peaks of flood flows have increased in volume while moving through the system more rapidly, so that damaging floods have become more frequent and more destructive. This increase in destruction is also tied to removal of riparian vegetation and encroachment of agricultural fields and buildings upon the floodplain. Because of the reduced distribution and isolation of remaining roundtail and headwater chub populations in combination with increased severity of fire and altered hydrologic regimes, the petitioners argue that both species are at risk of extinction independent of any other factors, such as nonnative fish or habitat degradation.

*Evaluation of Information in the Petition*

The petition provides substantial scientific information that illustrates the severity of the threat of stochastic events to rare and fragmented populations, and includes research conducted specifically in the southwest, and on a suite of fishes including roundtail and headwater chubs (Fagan *et al.* 2002).

*Finding*

We have reviewed the petition and literature cited in the petition, and we have evaluated that information in relation to other pertinent literature and information available in our files. On the basis of our review, we find that the petition presents substantial scientific information indicating that listing the roundtail chub as a distinct population segment in the lower Colorado River basin, and the headwater chub throughout its range, may be warranted.

We have reviewed the available information to determine if the existing and foreseeable threats pose an emergency. We have determined that emergency listing is not warranted for these species at this time, because of the overall number of extant populations and the fact that some of these appear to be stable at the current time. However, if at any time we determine that emergency listing of the roundtail or headwater chub are warranted, we will seek to initiate an emergency listing.

The petitioners also request that critical habitat be designated for this species. We always consider the need for critical habitat designation when listing species. If we determine in our 12-month finding that listing the roundtail and headwater chub is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking.

*References Cited*

A complete list of all references cited herein is available upon request from the Field Supervisor (see **ADDRESSES** section).

*Author*

The primary authors of this document are staff at the Arizona Ecological Services Office (see **ADDRESSES** section).

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 30, 2005.

**Matt Hogan,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 05–13315 Filed 7–11–05; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register
Vol. 70, No. 132
Tuesday, July 12, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. FV05–929–610 REVIEW]**

### Cranberries Grown in States of Massachusetts, et al.

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of review and request for comments.

**SUMMARY:** This notice announces that the Agricultural Marketing Service (AMS) plans to review Marketing Order 929 for cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

**DATES:** Written comments on this notice must be received by September 12, 2005.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this notice of review. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov,* or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or may be viewed at *http://www.ams.usda.gov/fv/moab.html.*

**FOR FURTHER INFORMATION CONTACT:** Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737; Telephone: (301) 734–5243; Fax: (301) 734–5275; e-mail: *Kenneth Johnson@usda.gov;* or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; (202) 720–8938, or e-mail: *George.Kelhart@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Marketing Order No. 929, as amended (7 CFR part 929), regulates the handling of cranberries grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674).

AMS initially published in the **Federal Register** (63 FR 8014; February 18, 1999) its plan to review certain regulations, including Marketing Order No. 929, under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612). An updated plan was published in the **Federal Register** on January 4, 2002 (67 FR 525). The plan was modified again and published in the **Federal Register** on August 14, 2003 (68 FR 48574). Because many AMS regulations impact small entities, AMS has decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review.

The purpose of the review will be to determine whether the marketing order for cranberries grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York should be continued without change, amended, or rescinded (consistent with the objectives of the AMAA) to minimize the impacts on small entities. In conducting this review, AMS will consider the following factors: (1) The continued need for the marketing order; (2) the nature of complaints or comments received from the public concerning the marketing order; (3) the complexity of the marketing order; (4) the extent to which the marketing order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

Written comments, views, opinions, and other information regarding the cranberry marketing order's impact on small businesses are invited.

Dated: July 7, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–13650 Filed 7–11–05; 8:45 am]

**BILLING CODE 3410–02–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Siskiyou County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Siskiyou County Resource Advisory Committee will meet in Yreka, California, July 18, 2005. The meeting will include routine business and the review and discussion of submitted large project concept papers.

**DATES:** The meeting will be held July 18, 2005, from 4 p.m. until 7 p.m.

**ADDRESSES:** The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

**FOR FURTHER INFORMATION CONTACT:** Don Hall, RAC Coordinator, Klamath National Forest, (530) 481–4468 or electronically at *donaldhall@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: July 5, 2005.

**Margaret J. Boland,**

*Designated Federal Official.*

[FR Doc. 05–13622 Filed 7–11–05; 8:45 am]

**BILLING CODE 3410–11–M**

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### Courthouse Access Advisory Committee; Meeting

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice of meeting.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to advise the Board on issues related to the accessibility of courthouses covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. The Courthouse Access Advisory Committee (Committee) includes organizations with an interest in courthouse accessibility. This notice announces the date, times and location of the next Committee meeting, which will be open to the public.

**DATES:** The meeting of the Committee is scheduled for August 4, 2005 (beginning at 9 a.m. and ending at 5 p.m.) and August 5, 2005 (beginning at 9 a.m. and ending at 3 p.m.).

**ADDRESSES:** The meeting will be held at the Hotel Allegro Chicago, 171 West Randolph, Chicago, IL 60601.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Stewart, Office of General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0042 (Voice); (202) 272–0082 (TTY). E-mail *stewart@access-board.gov.* This document is available in alternate formats (cassette tape, Braille, large print, or computer disk). This document is also available on the Board's Internet site (*http://www.access-board.gov/caac/meeting.htm*).

**SUPPLEMENTARY INFORMATION:** In 2004, as part of the outreach efforts on courthouse accessibility, the Access Board established a Federal advisory committee to advise the Access Board on issues related to the accessibility of courthouses, particularly courtrooms, including best practices, design solutions, promotion of accessible features, educational opportunities, and the gathering of information on existing barriers, practices, recommendations, and guidelines. On October 12, 2004, the Access Board published a notice appointing 31 members to the Courthouse Access Advisory Committee. 69 FR 60608 (October 12, 2004). Members of the Committee include designers and architects, disability groups, members of the judiciary, court administrators, representatives of the codes community and standard-setting entities, government agencies, and others with an interest in the issues to be explored. The Committee held its initial meeting on November 4 and 5, 2004. Members discussed the current requirements for accessibility, committee goals and objectives and the establishment of subcommittees. The second meeting of the Committee was held in February, 2005. The Committee toured two courthouses and established three subcommittees: Education, Courtrooms and Courthouses (areas unique to courthouses other than courtrooms). The third meeting of the Committee was held in May, 2005. Members of the Committee toured a courthouse and continued work in the three subcommittees. Minutes of the meetings may be found on the Access Board's Web site at *http://www.access-board.gov/caac/index.htm.* At the August meeting of the Committee, members will continue to address issues both as a full Committee and in subcommittees.

Committee meetings are open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee during public comment periods scheduled on each day of the meeting. Members of groups or individuals who are not members of the Committee are invited to participate on the subcommittees. The Access Board believes that participation of this kind can be very valuable for the advisory committee process.

The meeting will be held at a site accessible to individuals with disabilities. Real-time captioning will be provided. Individuals who require sign language interpreters should contact Elizabeth Stewart by July 21, 2005. Notices of future meetings will be published in the **Federal Register**.

**Lawrence W. Roffee,**

*Executive Director.*

[FR Doc. 05–13686 Filed 7–11–05; 8:45 am]

**BILLING CODE 8150–01–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Coral Reef Economic Valuation Pretest.

*Form Number(s):* None.

*OMB Approval Number:* None.

*Type of Request:* Regular submission.

*Burden Hours:* 34.

*Number of Respondents:* 67.

*Average Hours Per Response:* 30 minutes.

*Needs and Uses:* This is a national survey using an Internet panel. The survey is designed to yield information that can be used to estimate non-use or passive economic values for Hawaii's coral reef ecosystems. The survey addresses the public's preferences and economic values for the use of no-take areas as a management tool and the public's preferences and economic values for restoring damaged coral reefs. A large scale pre-test of the survey (200 survey responses) will first be conducted. After evaluation of the pre-test and OMB approval, the main survey will be conducted (as a separate information collection) on a national sample of approximately 2,000 respondents.

*Affected Public:* Individuals or households.

*Frequency:* One time only.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: July 6, 2005.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05–13600 Filed 7–11–05; 8:45 am]

**BILLING CODE 3510–NK–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* The American Community Survey Content Test.

*Form Number(s):* ACS–1(X)C6.

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 56,933 hours.

*Number of Respondents:* 62,900.

*Avg Hours Per Response:* Questionnaire—40 min.; Content Reinterview—30 min.

*Needs and Uses:* The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the American Community Survey Content Test. Given the rapid demographic changes experienced in recent years and the strong expectation that such changes will continue and accelerate, the once-a-decade data collection approach of a decennial census is no longer acceptable as a source for the housing and socio-economic data collected on the Census Long-Form. To meet the needs and expectations of the country, the Census Bureau developed the American Community Survey (ACS). This survey collects long-form data every month and provide tabulations of these data on a yearly basis. In the past, the long-form data were collected only at the time of each decennial census. The ACS allows the Census Bureau to remove the long form from the 2010 Census, thus reducing operational risks, improving accuracy, and providing more relevant data.

Full implementation of the ACS in 2005 includes an annual sample of approximately three million residential addresses a year in the 50 states and District of Columbia and another 36,000 residential addresses in Puerto Rico each year. While this large sample of addresses permits production of single year estimates for areas with a population of 65,000 or more, estimates at lower levels of geography require aggregates of three and five years' worth of data. The year 2008 is the first year for changes to the ACS content since the 2003 data collection year. From 2008 through 2012, it is important that the content of the ACS questions remain consistent for the three and five year aggregated data estimates that the ACS will be able to produce. Data from year 2008 mark the first year of three year aggregated data including the year of the next decennial census in 2010. Similarly, 2008 will serve as the starting year for the five year aggregated data that includes 2010 (2008–2012). Given the significance of the year 2008, the ACS has committed to a research program during 2006 that will result in final content determination in time for the 2008 ACS. This research is the 2006 ACS Content Test. The 2006 ACS Content Test will address three primary research questions:

1. Per specific content areas, can changes to question wording, response categories, and redefinition of underlying constructs improve the quality of the collected data?

2. Do changes in the layout of the mail form necessary to accommodate the modified content impact response at a unit or item level?

3. What are the cost implications of a change in form design due to census short form questions in conjunction with ACS question changes?

The Content Test will include a national sample field test with 62,900 residential addresses. About half of the sample will serve as the test panel for the content; the other half will serve as the control panel and contain the current content of the 2005 ACS, plus three new content items included for the first time as part of the ACS Content Test. The three new topics are:

- Marital history (up to 3 new questions per person, depending on skip patterns)
- Health insurance (up to 2 new questions per person, depending on skip patterns)
- Service connected disability (up to 2 new questions, depending on skip patterns) Both the control and test versions will include these new items to keep context and questionnaire length consistent between the two versions.

These topics are included for testing on the Content Test, but the 2008 ACS may or may not include them. Only those topics for which Congress approves the legislation will be eligible for the 2008 ACS.

The ACS Content Test will include a Content Reinterview, conducted via CATI, as a method to measure response error. Along with other data quality measures, such as item non-response rates, measures of distributional changes and so on, simple response variance and gross difference rates will serve as indicators of the quality of the test questions relative to the current versions of the ACS questions.

Final content recommendations, an analysis of the data collected as part of the content test, including the Content Reinterview data, will guide the selection of the version of the questions that yield the highest quality data. Census Bureau analysts, subject matter experts, and experts from the other participating federal agencies will work together to determine the final question content based on the results of the test. The end product will reflect final content recommendation based on input from all participants. The final approval of these recommendations is expected in the early part of January 2007, so that the Census Bureau can implement all the necessary changes to the existing ACS data collection materials (*e.g.*, questionnaires, CATI/CAPI instruments, questionnaire instruction booklet, interviewer training materials, etc.) to reflect the final recommended questions/content in time for implementation of the 2008 ACS.

The American Community Survey itself provides data comparable to the decennial census long form, at a census tract level. Federal agencies use ACS to determine appropriate funding for states and local governments through block grants. State and local governments use ACS data for program planning, administration and evaluation. Thus the quality of the ACS data directly impact the success of federal, state and local government programs.

The objective of the 2006 ACS Content Test is to improve the quality of ACS data. Every step we take to improve the quality of the data further improves planning, administration and evaluation of the government programs that rely on ACS data. The Content Test provides the vehicle for improving the quality of the ACS data.

*Affected Public:* Individuals or households.

*Frequency:* One-time.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13 U.S.C., Sections 141, 193, and 221.

*OMB Desk Officer:* Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: July 6, 2005.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05–13598 Filed 7–11–05; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

*Bureau:* International Trade Administration.

*Title:* Mission/Exhibition Evaluation.

*Agency Form Number:* ITA–4075P.

*OMB Number:* 0625–0034.

*Type of Request:* Regular submission.

*Burden:* 167 hours.

*Number of Respondents:* 2,000.

*Avg. Hours Per Response:* 5 minutes.

*Needs and Uses:* U.S. Department of Commerce (DOC) and DOC-certified trade missions and exhibitions are overseas events planned, organized and led by government and non-government export promotion agencies such as industry trade associations, agencies of Federal, state and local governments; chambers of commerce; regional consortia; and other export oriented groups. This form is used to: (1) Evaluate the effectiveness of DOC or DOC-certified overseas trade events through the collection of information relating to required performance measures; (2) document the results of participation in DOC trade events; (3) evaluate results reported by small to mid-sized, new-to-exports/new-to-market U.S. companies; (4) document the successful completion of trade promotion activities conducted by overseas DOC offices; and (5) identify strengths and weaknesses of DOC trade promotion programs in the interest of improving service to the U.S. business community. This request is being submitted to extend OMB authority for this information collection form to enable participants to continue to address whether or not their overall objective(s) were met by participating in a particular trade mission or exhibition.

*Affected Public:* Business or other for profit, not-for-profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit, voluntary.

*OMB Desk Officer:* David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6612, 14th & Constitution Avenue, NW., Washington, DC 20230. Phone Number: (202) 482–3129. E-mail: *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, *David_Rostker@omb.eop.gov* or fax (202) 395–7285, within 30 days of the publication of this notice in the **Federal Register**.

Dated: July 6, 2005.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05–13596 Filed 7–11–05; 8:45 am]

**BILLING CODE 3510–FP–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

*Bureau:* International Trade Administration.

*Title:* Application for an Export Trade Certificate of Review.

*Agency Form Number:* ITA–4093P.

*OMB Number:* 0625–0125.

*Type of Request:* Regular submission.

*Burden:* 384 hours.

*Number of Respondents:* 12.

*Avg. Hours Per Response:* 32 hours.

*Needs and Uses:* Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290, 96 Stat. 1233–1247), requires the Department of Commerce to establish a program to evaluate applications for an Export Trade Certificates of Review (antitrust preclearance for joint export related activities), and with the concurrence of the Department of Justice, issue such certificates where the requirements of the Act are satisfied. The Act requires that Commerce and Justice conduct economic and legal antitrust analyses prior to the issuance of a certificate. The collection of information is necessary to conduct the required economic and legal antitrust analyses. Without the information, there could be no basis upon which a certificate could be issued.

In the Department of Commerce, the economic and legal analyses are performed by the Office of Export Trading Company Affairs and the Office of the General Counsel, respectively. The Department of Justice analyses will be conducted by its Antitrust Division. The purpose of such analyses is to make a determination as to whether or not to issue an Export Trade Certificate of Review. A certificate provides its holder and the members named in the certificate (a) immunity from government actions under state and Federal antitrust laws for the export conduct specified in the certificate; (b) some protection from frivolous private suits by limiting their liability in private actions from treble to actual damages when the challenged activities are covered by an Export Certificate of Review. Title III was enacted to reduce uncertainty regarding application of U.S. antitrust laws to export activities-especially those involving actions by domestic competitors. Application for an export trade certificate of review is voluntary.

*Affected Public:* Businesses or other for-profit, not-for-profit institutions, state, local or tribal Government.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit, voluntary.

*OMB Desk Officer:* David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6612, 14th and Constitution, NW., Washington, DC 20230. E-mail: *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, *David_Rostker@omb.eop.gov* or fax (202) 395–7285 within 30 days of the publication of this notice.

Dated: July 6, 2005.

**Madeline Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05–13597 Filed 7–11–05; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–274–804]**

### Preliminary Results of Antidumping Duty Administrative Review: Carbon and Alloy Steel Wire Rod From Trinidad and Tobago

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests by interested parties, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on carbon and alloy steel wire rod (''wire rod'') from Trinidad and Tobago for the period of review (''POR'') October 1, 2003, through September 30, 2004.

We preliminarily determine that during the POR, Carribean Ispat Limited and its affiliates Ispat North America Inc. (''INA'') and Walker Wire (Ipsat) Inc. (''Walker Wire'') (collectively ''CIL''), sold subject merchandise at less than normal value (''NV''). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties equal to the difference between the export price (''EP'') or constructed export price (''CEP'') and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit comments in this segment of the proceeding should also submit with them: (1) a statement of the issues and (2) a brief summary of the comments. Further, parties submitting written comments are requested to provide the Department with an electronic version of the public version of any such comments on diskette.

**EFFECTIVE DATE:** July 12, 2005.

**FOR FURTHER INFORMATION CONTACT:** Dennis McClure or James Terpstra, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–3965, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On October 29, 2002, the Department published in the **Federal Register** the antidumping duty order on wire rod from Trinidad and Tobago; *see Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945 (''*Wire Rod Orders*''). On October 1, 2004, we published in the **Federal Register** a *Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 69 FR 58889.

We received timely requests for review from petitioners[1], and CIL[2], in accordance with 19 CFR 351.213(b)(2). On November 19, 2004, we published the notice of initiation of this antidumping duty administrative review covering the period October 1, 2003, through September 30, 2004, naming CIL as the respondent. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 67701 (November 19, 2004). On December 1, 2004, we sent a questionnaire to CIL.[3]

Section B: Comparison Market Sales
Section C: Sales to the United States
Section D: Cost of Production and Constructed Value
Section E: Cost of Further Manufacture or Assembly Performed in the United States

CIL submitted its responses to sections A through D of the Department's questionnaire on January 31, 2005, and sections C and E relating to Walker Wire on February 28, 2005. On April 27, 2005, the petitioners submitted comments on CIL's questionnaire response.

On March 22, 2005, the Department issued a section A–E supplemental questionnaire to CIL. We received the response to the supplemental questionnaire on April 20, 2005. On May 5, 2005, the Department issued a second section A–E supplemental questionnaire to CIL. We received the response to the second supplemental questionnaire on May 25, 2005.

On June 6, 2005, the petitioners requested that the Department issue additional questions with regard to CIL's claimed level of trade (''LOT'') and request for a CEP Offset.

On June 14, 2005, the Department received a reconciliation of CIL's home market and U.S. sales database to its income statements.

## Scope of the Order

The merchandise subject to this order is certain hot–rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above–noted physical characteristics and meeting the HTSUS definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the

[1] The petitioners are ISG Georgetown Inc. (formerly Georgetown Steel Company), Gerdau Ameristeel US Inc. (formerly Co-Steel Raritan, Inc.), Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

[2] On May 2, 2005, we preliminarily found that Mittal Steel Point Lisas Limited is the successor-in-interest to CIL. *See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 70 FR 22634.

[3] Section A: Organization, Accounting Practices, Markets and Merchandise

aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis - that is, the direction of rolling - of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003. *Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Final Results of Changed Circumstances Review*, 68 FR 64079 (November 12, 2003).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end–use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under review are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

**Product Comparisons**

In accordance with section 771(16) of the Tariff Act of 1930, as amended (''the Act''), all products produced by the respondent covered by the description in the Scope of the Order section, above, and sold in Trinidad and Tobago during the POR are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eight criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: grade range, carbon content range, surface quality, deoxidation, maximum total residual content, heat treatment, diameter range, and coating. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

**Comparisons to Normal Value**

To determine whether sales of wire rod from Trinidad and Tobago were made in the United States at less than NV, we compared the EP or CEP to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted–average prices for NV and compared these to individual U.S. transactions.

**Export Price and Constructed Export Price**

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale. When appropriate, we reduced these prices to reflect discounts and increased the prices to reflect billing adjustments and surcharges.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight, international freight, demurrage expenses, marine insurance, survey fees, U.S. customs duties and various U.S. movement expenses from arrival to delivery.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (cost of credit, warranty, and further manufacturing). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include certain indirect selling expenses incurred by affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. Furthermore, we recalculated INA's credit expense and inventory carrying costs as we did in the final results of the first administrative review. *See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 70 FR 12648 (March 15, 2005) (''*First Review*'') and accompanying Issues and Decision Memorandum at Comment 6.

**Normal Value**

**A. SELECTION OF COMPARISON MARKETS**

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared CIL's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and 773(a)(1)(C) of the Act, because CIL had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

**B. COST OF PRODUCTION ANALYSIS**

The Department found and disregarded home market sales that were made below the cost of production (''COP'') in the most recently completed segment of the proceeding in which CIL participated. *See First Review*. Pursuant to section 773(b)(2)(A)(ii) of the Act, we have reasonable grounds to believe or suspect that sales by CIL of the foreign like product under consideration for the determination of NV in this review were made at prices below the COP. Therefore, we initiated a cost investigation of the respondent.

*1. Calculation of COP*

Before making any comparisons to NV, we conducted a COP analysis of CIL, pursuant to section 773(b) of the Act, to determine whether the respondent's comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (''SG&A'') and packing, in accordance with section 773(b)(3) of the Act. CIL reported cost databases based on generally accepted accounting principles (''GAAP'') in Trinidad and Tobago and U.S. GAAP. Pursuant to section 773(f)(1)(A) of the Act, the Department relied on CIL's cost database which was based on CIL's audited financial statements prepared in accordance with their home country GAAP (*i.e.*, IAS) as submitted.[4]

In addition, CIL requested that we use control number–specific costs for two six-month cost periods (October 2003 through March 2004 and April 2004 through September 2004) to account for the increase in raw material (*i.e.*, iron ore and various alloys used in the production of wire rod) prices during the POR. CIL based its request, in its January 31, 2005, section D response, on the fact that the cost of certain inputs increased substantially.

Our normal practice for a respondent in a country that is not experiencing high inflation is to calculate a single weighted–average cost for the entire POR except in unusual cases where this preferred method would not yield an appropriate comparison in the margin calculation. *See Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke Order: Brass Sheet and Strip from the Netherlands*, 64 FR 48760 (September 8, 1999) citing *Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*; 64 FR 30664, 30676 (June 8, 1999) (concluding that weighted–average costs for two periods were permissible where major declines in currency valuations distorted the margin calculations); *Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8925 (February 23, 1998) (calculating quarterly weighted–average costs due to a significant and consistent price and cost decline in the market); *Final Determination of Sales at Less than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*; 58 FR 15467, 15476 (March 23, 1993) (determining that the Department may use quarterly weighted–average costs where there exists a consistent downward trend in both U.S. and home market prices during the period); *Final Determination of Sales at Less than Fair Value: Erasable Programable Read Only Memories from Japan*; 51 FR 39680, 39682 (October 30, 1986) (finding that significant changes in the COP during a short period of time due to technological advancements and changes in production process justified the use of quarterly weighted–average costs).

We have reviewed the information on the record. CIL has not demonstrated that the raw material price increases were significant and/or consistent and would distort the margin calculation. Therefore, we followed our normal practice of calculating a single weighted–average cost for the POR.

*2. Test of Comparison Market Prices*

As required under section 773(b)(2) of the Act, we compared the weighted–average COP to the per–unit price of the comparison market sales of the foreign like product, to determine whether these sales were made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below–cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses, and packing expenses which were excluded from COP for comparison purposes.

*3. Results of COP Test*

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in ''substantial quantities.'' *See* section 773(b)(2)(C) of the Act. Further, the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because they were made over the course of the POR. In such cases, because we compared prices to POR–average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded below–cost sales of a given product and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See Preliminary Calculation Memorandum for Caribbean Ispat Ltd.*, dated July 5, 2005, on file in the Central Records Unit, room B099 of the main Department building, for our calculation methodology and results.

**C. CALCULATION OF NORMAL VALUE BASED ON COMPARISON MARKET PRICES**

We based home market prices on packed prices to unaffiliated purchasers in Trinidad and Tobago. We adjusted the starting price for inland freight pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, for comparisons made to EP sales, we made adjustments for differences in circumstances of sale (''COS'') pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (credit and warranty directly linked to sales transactions). No other adjustments to NV were claimed or allowed.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411 of the Department's regulations. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise, using POR–average costs.

**D. LEVEL OF TRADE/CONSTRUCTED EXPORT PRICE OFFSET**

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on

[4] For the final determination of the investigation and final results of the first administrative review, we used cost databases based on CIL's home market GAAP. *See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago*, 67 FR 55788 (August 30, 2002) and First Review.

sales in the comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting–price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. LOT is also the level of the starting–price sale, which is usually from exporter to importer. For CEP transactions, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP–offset provision).

In implementing these principles in this review, we obtained information from CIL about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by CIL for each channel of distribution. In identifying LOTs for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses pursuant to section 772(d) of the Act.

In the home market, CIL reported sales to end–users as its only channel of distribution. In the U.S. market, CIL reported sales through two channels of distribution, one involving sales made directly by CIL to end–users and trading companies, and the second involving sales made by CIL's affiliated U.S. resellers to end–users. We have determined that the sales made by CIL directly to U.S. customers are EP sales and those made by CIL's affiliated U.S. resellers constitute CEP sales.

We found the home market and EP sales to be at the same LOT. CIL's EP sales and home market sales were both made primarily to end–users. In both cases, the selling functions performed by CIL were almost identical in both markets. Other than freight & delivery arrangement, which was only provided for U.S. sales, in both markets CIL provided services such as: strategic and economic planning, sales forecasting, sales force development, solicitation of orders, technical advice, price negotiation, processing purchase orders, invoicing, extending credit, managing accounts receivable, and making arrangements for warranties related to sales.

CIL makes CEP sales to the United States through its affiliates, INA and Walker Wire. Sales through CIL's affiliates are normally made to unrelated end–users in the U.S. market. However, because in our LOT analysis for CEP sales we only consider the selling activities reflected in the price after the deduction of the expenses incurred by the U.S. affiliate, the record indicates that for CIL's CEP sales there are substantially fewer services performed than the sales in its home market. Therefore, we have determined that CIL's home market sales are made at a more advanced stage of the marketing process than the CEP sales to the affiliates and therefore are at a different LOT within the meaning of 19 CFR 351.412.

Accordingly, when we compared CEP sales to home market sales, we examined whether an LOT adjustment may be appropriate. As CIL sold at only one LOT in the home market, there is no basis to determine that there is a pattern of consistent price differences between LOTs. Further, we do not have information which would allow us to examine pricing patterns of CIL's sales of other similar products, and there are no other respondents or record evidence on which such an analysis could be based.

Because the data available do not provide an appropriate basis for making an LOT adjustment and the LOT of CIL's home market sales is at a more advanced stage of marketing than the LOT of the CEP sales, we have made a CEP offset to CIL's NV in accordance with section 773(a)(7)(B) of the Act. This offset is equal to the amount of indirect expenses incurred in the home market not exceeding the amount of the deductions made from the U.S. price in accordance with section 772(d)(1)(D) of the Act.

**Currency Conversion**

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates in effect on the dates of U.S. sales, as obtained from the Federal Reserve Bank.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that the following weighted–average dumping margin exists for the period October 1, 2003, through September 30, 2004:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Caribbean Ispat Limited | 6.19 |

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Further, parties submitting written comments are requested to provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, within 120 days of publication of these preliminary results.

**Assessment Rate**

The Department shall determine and CBP shall assess antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer–specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer–specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the

amount by the total entered value of the sales to that importer.

**Cash Deposit Requirements**

To calculate the cash deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of wire rod from Trinidad and Tobago entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company listed above will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 11.40 percent, the ''All Others'' rate established in the LTFV investigation. *See Wire Rod Orders*.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and increase the subsequent assessment of the antidumping duties by the amount of antidumping duties reimbursed.

These preliminary results of this administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 5, 2005.

**Barbara E. Tillman,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–3690 Filed 7–11–05; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–351–828]**

### Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products From Brazil

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce is fully extending the time limit for the final results of the administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from Brazil. The period of review is March 1, 2003, through February 29, 2004. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

**EFFECTIVE DATE:** July 12, 2005.

**FOR FURTHER INFORMATION CONTACT:** Helen Kramer or Kristin Najdi at (202) 482–0405 or (202) 482–8221, respectively; AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 6, 2005, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from Brazil covering the period March 1, 2003, through February 29, 2004 (70 FR 17406). The final results for the antidumping duty administrative review of certain hot–rolled carbon steel flat products from Brazil are currently due no later than August 4, 2005.

Extension of Time Limits for Preliminary Results Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Agreement Act (the Act), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an antidumping duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 741(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

The Department has determined it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, by August 4, 2005), in accordance with section 751(a)(3)(A) of the Act, for the following reasons: (1) the cost verification of the affiliated importer located in the United States is scheduled to take place July 20–22, 2005; (2) there is insufficient time for the briefing schedule following the sales and cost verifications; and (3) a domestic interested party has requested a hearing, which must take place after the briefs are filed. Accordingly, the Department is fully extending the time limits for completion of the final results to no later than October 3, 2005.

We are issuing and publishing this notice in accordance with Section 751(a)(1) and 777(i)(1) of the Act.

Dated: July 6, 2005.

**Barbara E. Tillman,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. E5–3685 Filed 7–11–05; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–357–810]**

### Notice of Preliminary Rescission of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, From Argentina

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request from the petitioner, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on oil country tubular goods from Argentina. This review covers one manufacturer/exporter of the subject merchandise, Siderca S.A.I.C. (Siderca). The Department is preliminarily rescinding this review based on record evidence indicating that the respondent had no entries of subject merchandise during the period of review (POR). The POR is August 1, 2003, through July 31, 2004.

**DATES:** *Effective Date*: July 12, 2005.

**FOR FURTHER INFORMATION CONTACT:** Fred Baker, Mike Heaney, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2924 (Baker), (202) 482–4475 (Heaney), or (202) 482–0649 (James).

**SUPPLEMENTARY INFORMATION:**

## Background

On August 11, 1995, the Department published the antidumping duty order on oil country tubular goods from Argentina. *See Antidumping Duty Order: Oil Country Tubular Goods from Argentina*, 60 FR 41055 (August 11, 1995). On August 3, 2004, the Department published an opportunity to request an administrative review of this order for the period August 1, 2003, through July 31, 2004. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 46496 (August 3, 2004). On August 31, 2004, United States Steel Corporation (petitioner) requested that the Department conduct an administrative review of sales of the subject merchandise made by Siderca.

On September 22, 2004, the Department initiated the administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 69 FR 56745 (September 22, 2004).

On September 27, 2004, the Department issued its antidumping duty questionnaire to Siderca. In response, Siderca stated in an October 18, 2004, submission that it had no consumption entries of subject merchandise during the POR, and requested that the Department rescind the review with respect to Siderca.

On April 19, 2005, the Department issued a supplemental questionnaire to Siderca. The Department attached to it a list of shipments of OCTG from Argentina that entered the United States during the POR that the Department had reason to believe had been manufactured by Siderca or its affiliates. We obtained this list from the U.S. Customs and Border Protection (CBP) by doing a CBP automated commercial system (ACS) data query. We asked Siderca to explain why it believed these entries were not subject to this administrative review. Siderca submitted its response on April 22, 2005. Siderca explained that it did not sell to the importer identified on the list of entries that we had attached to the April 19, 2005, supplemental questionnaire.

On June 22, 2005, the Department placed on the record of this administrative review copies of import documentation obtained from CBP.

## Period of Review

The POR is August 1, 2003, through July 31, 2004.

## Scope of the Order

Oil country tubular goods (OCTG) are hollow steel products of circular cross-section, including oil well casing and tubing of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products).

This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium. Drill pipe was excluded from this order beginning August 11, 2001. *See Continuation of Countervailing and Antidumping Duty Orders on Oil Country Tubular Goods From Argentina, Italy, Japan, Korea and Mexico, and Partial Revocation of Those Orders From Argentina and Mexico With Respect to Drill Pipe*, 66 FR 38630 (July 25, 2001).

The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this order is dispositive.

## Preliminary Rescission

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. Based on our review of data from the CBP ACS data query and of documentation from CBP, we preliminarily determine that Siderca had no entries during the POR. We are therefore preliminarily rescinding the review in accordance with 19 CFR 351.213(d)(3). We are giving interested parties an opportunity to comment on this preliminary rescission. An interested party may request a hearing within 30 days of publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date. *See* 19 CFR 351.310(d).

Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of this preliminary rescission. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of this preliminary rescission.

We are issuing and publishing this notice in accordance with sections 751(a)(1) of the Tariff Act and 19 CFR 351.213(d)(4).

Dated: July 6, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–3686 Filed 7–11–05; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–809]**

### Stainless Steel Flanges From India: Notice of Final Results of Antidumping Duty Administrative Review and Revocation in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On March 7, 2005, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on stainless steel flanges from India. *See Certain Forged Stainless Steel Flanges from India; Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke the Order in Part*, 70 FR 10953 (March 7, 2005) (*Preliminary Results*). This review covers imports of subject merchandise from Viraj Forgings, Ltd. (Viraj), and Echjay Forgings Pvt., Ltd. (Echjay). The period of review (POR) is February 1, 2003, through January 31, 2004.

Based on our analysis of the comments received, we have made no changes in the margin calculations for either Viraj or Echjay. Therefore, the final results do not differ from the preliminary results. The final weighted-average dumping margins for Viraj and Echjay are listed below in the section entitled ''Final Results of Review.'' In addition, we are revoking Viraj from the order.

**DATES:** Effective Date: July 12, 2005.

**FOR FURTHER INFORMATION CONTACT:** Fred Baker, Mike Heaney, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2924, (202) 482–4475, or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On March 7, 2005, the Department published the *Preliminary Results*. We invited parties to comment on those preliminary results. On April 6, 2005, we received a case brief from Echjay. No party filed rebuttal comments.

#### Period of Review

The POR is February 1, 2003, through January 31, 2004.

#### Scope of the Order

The products covered by this order are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld-neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the scope of the order.

#### Revocation

On March 1, 2004, Viraj requested revocation of the antidumping duty order with respect to its sales of the subject merchandise, pursuant to 19 CFR 351.222(b). In a March 12, 2004 submission Viraj provided each of the certifications required under 19 CFR 351.222(e).

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751 of the Tariff Act. While Congress has not specified the procedures that the Department must follow in revoking the order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value (NV) in the current review period and that the company will not sell subject merchandise at less than NV in the future; (2) a certification that the company sold commercial quantities of the subject merchandise to the United States in each of the three years forming the basis of the request; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider: (1) Whether the company in question sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV; and (3) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping. *See* 19 CFR 351.222(b)(2).

In the preliminary results, we found the request from Viraj met all of the criteria under 19 CFR 351.222. We continue to find this is the case for Viraj. With regard to the criteria of 19 CFR 351.222(b)(2), our final margin calculations show that Viraj sold stainless steel flanges at only a *de minimis* level of dumping during the current period. *See* dumping margins below. In addition, Viraj sold stainless steel flanges at not less than NV in the two previous administrative reviews (*i.e.*, Viraj's dumping margin was either zero or *de minimis*). *See Certain Forged Stainless Steel Flanges from India; Final Results of Antidumping Duty Administrative Review,* 69 FR 10409 (March 5, 2004) and *Certain Forged Stainless Steel Flanges from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 42005 (July 16, 2003).

Based on our examination of the sales data submitted by Viraj, we determine that it sold the subject merchandise in the United States in commercial quantities in this review and each of the two prior administrative reviews. Additionally, we find that the continued application of the antidumping duty order is not otherwise necessary to offset dumping. Therefore, we determine that Viraj qualifies for revocation of the order on stainless steel flanges pursuant to 19 CFR 351.222(b)(2) and that the order with respect to merchandise produced and exported by Viraj should be revoked. In accordance with 19 CFR 351.222(f)(3), we are terminating the suspension of liquidation for any of the merchandise in question that is entered, or withdrawn from warehouse, for consumption on or after February 1, 2004, and will instruct U.S. Customs and Border Protection (CBP) to refund any cash deposits for such entries.

#### Analysis of Comments Received

All issues raised in Echjay's brief to this administrative review are addressed

in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Barbara E. Tillman, Acting Deputy Assistant Secretary, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated July 5, 2005, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department of Commerce building. In addition, a complete version of the decision memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/*. The paper copy and electronic version of the decision memorandum are identical in content.

**Final Results of Review**

As a result of our review, we determine the weighted-average dumping margins for the period February 1, 2003, through January 31, 2004, to be as follows:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Echjay Forgings Pvt., Ltd ..... | 0.03 |
| Viraj Forgings, Ltd ..... | 0.01 |

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific duty assessment rates for the merchandise in question based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). To determine whether the duty assessment rates were *de minimis*, we calculated importer-specific *ad valorem* ratios based on export prices. We will direct CBP to assess the resulting assessment rates uniformly on all entries of that particular importer made during the period of review. The Department will issue assessment instructions directly to CBP within 15 days of publication of these final results of review.

**Cash Deposit Requirements**

Because we have revoked the order with respect to Viraj's exports of subject merchandise, we will order CBP to terminate the suspension of liquidation for exports of such merchandise entered, or withdrawn from warehouse, for consumption on or after February 1, 2004, and to refund all cash deposits collected for such unliquidated entries.

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication, as provided by section 751(a)(1) of the Tariff Act: (1) Since the margin for Echjay was less than 0.50 percent, and hence *de minimis*, no cash deposit shall be required for Echjay; (2) for previously reviewed or investigated companies not listed above, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will be 162.14 percent, the ''all others'' rate established in the LTFV investigation. *See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges from India*; 59 FR 5994 (February 9, 1994).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Notification of Interested Parties**

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties or countervailing duties occurred and the subsequent assessment of double antidumping duties or countervailing duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) or their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(I) of the Tariff Act.

Dated: July 5, 2005.

**Barbara E. Tillman,**

*Acting Assistant Secretary for Import Administration.*

**Appendix—Issues Raised in Decision Memorandum**

Comment 1: Assignment of Antidumping Rate to Exporter As Well As Manufacturer

[FR Doc. E5–3688 Filed 7–11–05; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(C–427–819)**

### Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On March 7, 2005, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty (CVD) order on low enriched uranium from France for the period January 1, 2003, through December 31, 2003 (*see Preliminary Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France*, 70 FR 10989 (March 7, 2005) (*LEU Preliminary Results 2003*)). The Department has now completed the administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on our analysis of the comments received, the Department has not revised the net subsidy rate for Eurodif S.A. (Eurodif)/Compagnie Generale Des Matieres Nucleaires (COGEMA), the producer/exporter of subject merchandise covered by this review. For further discussion of our analysis of the comments received for these final results, *see* the July 5, 2005, Issues and Decision Memorandum from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration, concerning the Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France (*LEU Decision Memorandum 2003*). The final net subsidy rate for Eurodif/COGEMA is listed below in ''Final Results of Review.''

**EFFECTIVE DATE:** July 12, 2005.

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson, Import Administration, AD/CVD Operations, Office 3, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4793.

**SUPPLEMENTARY INFORMATION:**

## Background

On March 7, 2005, the Department published in the **Federal Register** the preliminary results (*see LEU Preliminary Results 2003* at 70 FR 10989). We invited interested parties to comment on the results. On April 7, 2005, we received a case brief from Eurodif/COGEMA and the Government of France (GOF), the respondents. On April 12, 2005, we received a rebuttal brief from petitioners.[1] Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers only Eurodif/COGEMA. The review covers the period January 1, 2003, through December 31, 2003, and two programs.

## Scope of Order

The product covered by this order is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride ($UF_6$) with a $U^{235}$ product assay of less than 20 percent that has not been converted into another chemical form, such as $UO_2$, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down–blending of highly enriched uranium).

Certain merchandise is outside the scope of this order. Specifically, this order does not cover enriched uranium hexafluoride with a $U^{235}$ assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of this order. For purposes of this order, fabricated uranium is defined as enriched uranium dioxide ($UO_2$), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates ($U_3O_8$) with a $U^{235}$ concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a $U^{235}$ concentration of no greater than 0.711 percent are not covered by the scope of this order.

Also excluded from this order is LEU owned by a foreign utility end–user and imported into the United States by or for such end–user solely for purposes of conversion by a U.S. fabricator into uranium dioxide ($UO_2$) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end–user, or their designated transporter(s) while in U.S. customs territory, and (ii) are re–exported within eighteen (18) months of entry of the LEU for consumption by the end–user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

## Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the *LEU Decision Memorandum 2003*, which is hereby adopted by this notice. A list of the issues contained in that decision memorandum is attached to this notice as Appendix I. Parties can find a complete discussion of the issues raised in this review and the corresponding recommendations in that public memorandum, which is on file in the Central Records Unit (CRU), room B–099 of the Main Commerce Building. In addition, a complete copy of the *LEU Decision Memorandum 2003* can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov*, under the heading ''**Federal Register** Notices.'' The paper copy and electronic version of the decision memorandum are identical in content.

## Final Results of Review

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an *ad valorem* subsidy rate for Eurodif/COGEMA. For the review period, we determine the net subsidy rate to be 1.23 percent *ad valorem*.

As discussed in Comment 2 of the *LEU Decision Memorandum 2003*, we have been enjoined from liquidating entries of the subject merchandise. Therefore, we do not intend to issue liquidation instructions to U.S. Customs and Border Protection (CBP) for entries made during the period January 1, 2003, through December 31, 2003, until such time as the injunctions, issued on June 24, 2002, and November 1, 2004, are lifted.

We will instruct CBP, within 15 days of publication of the final results of this review, to collect cash deposits of estimated countervailing duties at 1.23 percent *ad valorem* of the f.o.b. price on all shipments of the subject merchandise from the reviewed entity, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results.

We will instruct CBP to continue to collect cash deposits for non–reviewed companies at the most recent company–specific rate applicable to the company. Accordingly, the cash deposit rate that will be applied to non–reviewed companies covered by this order will be the rate for that company established in the investigation. *See Amended Final Determination and Notice of Countervailing Duty Order: Low Enriched Uranium from France*, 67 FR 6689 (February 13, 2002). The ''all others'' rate shall apply to all non–reviewed companies until a review of a company assigned this rate is requested.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act.

Dated: July 5, 2005.

**Barbara E. Tillman,**

*Acting Assistant Secretary for Import Administration.*

## Appendix I–Issues and Decision Memorandum

I. SUBSIDIES VALUATION INFORMATION
A. Calculation of Ad Valorem Rates
II. ANALYSIS OF PROGRAMS
A. Programs Determined to Confer Subsidies

[1] Petitioners are the United States Enrichment Corporation (USEC) and USEC Inc.

*1. Purchases at Prices that Constitute ''More Than Adequate Remuneration''*
*2. Exoneration/Reimbursement of Corporate Income Taxes*
III. TOTAL *AD VALOREM* RATE
IV. ANALYSIS OF COMMENTS
Comment 1: Benefit from Transaction
Comment 2: Draft Customs Instructions

[FR Doc. E5–3687 Filed 7–11–05; 8:45 am]
**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(C–428–829); (C–421–809); (C–412–821)**

### Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**SUMMARY:** On March 7, 2005, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative reviews of the countervailing duty (CVD) orders on low enriched uranium from Germany, the Netherlands, and the United Kingdom for the period January 1, 2003, through December 31, 2003 (*see Preliminary Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom*, 70 FR 10986 (March 7, 2005) (*Preliminary Results*)). The Department has now completed these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on information received since the *Preliminary Results* and our analysis of the comments received, the Department has not revised the net subsidy rate for Urenco Deutschland GmbH of Germany (UD), Urenco Nederland B.V. of the Netherlands (UNL), Urenco (Capenhurst) Limited (UCL) of the United Kingdom, Urenco Ltd., and Urenco Inc. (collectively, the Urenco Group or respondents), the producers/exporters of subject merchandise covered by these reviews. For further discussion of our positions, *see* the ''Issues and Decision Memorandum'' from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration concerning the ''Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom'' (Decision Memorandum) dated July 5, 2005. The final net subsidy rates for the reviewed companies are listed below in the section entitled ''Final Results of Reviews.''

**EFFECTIVE DATE:** July 12, 2005.

**FOR FURTHER INFORMATION CONTACT:** Darla Brown, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:**

#### Background

On March 7, 2005, the Department published in the **Federal Register** its *Preliminary Results*. We invited interested parties to comment on the results. Since the preliminary results, the following events have occurred.

On April 6, 2005, we received case briefs from respondents. In their case brief, respondents requested a hearing. On April 11, 2005, we received rebuttal briefs from petitioners.[1] On April 12, 2005, respondents withdrew their request for a hearing.

Pursuant to 19 CFR 351.213(b), these reviews cover only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, these reviews cover the Urenco Group. These reviews cover the period January 1, 2003, through December 31, 2003, and four programs.

#### Scope of the Orders

For purposes of these orders, the product covered is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride ($UF_6$) with a $U^{235}$ product assay of less than 20 percent that has not been converted into another chemical form, such as $UO_2$, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down–blending of highly enriched uranium).

Certain merchandise is outside the scope of these orders. Specifically, these orders do not cover enriched uranium hexafluoride with a $U^{235}$ assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of these orders. For purposes of these orders, fabricated uranium is defined as enriched uranium dioxide ($UO_2$), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates ($U_3O_8$) with a $U^{235}$ concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a $U^{235}$ concentration of no greater than 0.711 percent are not covered by the scope of these orders.

Also excluded from these orders is LEU owned by a foreign utility end–user and imported into the United States by or for such end–user solely for purposes of conversion by a U.S. fabricator into uranium dioxide ($UO_2$) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end–user, or their designated transporter(s) while in U.S. customs territory, and (ii) are re–exported within eighteen (18) months of entry of the LEU for consumption by the end–user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to these orders is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under HTSUS subheadings 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these reviews are addressed in the Decision Memorandum, which is hereby adopted by this notice. A list of the issues contained in the Decision Memorandum is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum, which is on file in the Central Record Unit (CRU), room B–099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at http://ia.ita.doc.gov, under the heading ''**Federal Register** Notices.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

#### Final Results of Reviews

In accordance with section 777A(e)(1) of the Act and 19 CFR 351.221(b)(5), we calculated an *ad valorem* subsidy rate for the Urenco Group for calendar year

[1] Petitioners are the United States Enrichment Corporation (USEC) and USEC Inc.

2003. The total net subsidy rate for the Urenco Group in these reviews is 0.00 percent *ad valorem* for the POR.

We will instruct U.S. Customs and Border Protection (CBP), within 15 days of publication of the final results of these reviews, to liquidate shipments of low enriched uranium by Urenco from Germany, the Netherlands, and the United Kingdom entered, or withdrawn from warehouse, for consumption from January 1, 2003, through December 31, 2003, without regard to countervailing duties. Moreover, the Department also will instruct CBP not to collect cash deposits of estimated countervailing duties on all shipments of the subject merchandise from the reviewed entity, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews. In addition, for the period January 1, 2003, through December 31, 2003, the assessment rates applicable to all non–reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

We will instruct CBP to continue to collect cash deposits for non–reviewed companies at the most recent company–specific or country–wide rate applicable to the company. Accordingly, the cash deposit rate that will be applied to non–reviewed companies covered by this order will be the rate for that company established in the investigations. *See Notice of Amended Final Determinations and Notice of Countervailing Duty Orders: Low Enriched Uranium from Germany, the Netherlands and the United Kingdom*, 67 FR 6688 (February 13, 2002) (*Amended Final*). The ''all others'' rate shall apply to all non–reviewed companies until a review of a company assigned this rate is requested. In addition, for the period January 1, 2003, through December 31, 2003, the assessment rates applicable to all non–reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and this notice are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 5, 2005.

**Barbara E. Tillman,**

*Acting Assistant Secretary for Import Administration.*

**Appendix I - Issues and Decision Memorandum**

I. METHODOLOGY AND BACKGROUND INFORMATION
*A. International Consortium*
II. SUBSIDIES VALUATION INFORMATION
*A. Allocation Period*
III. ANALYSIS OF PROGRAMS
*A. Programs Determined Not to Confer a Benefit from the Government of Germany*
1. Enrichment Technology Research and Development Program
2. Forgiveness of Centrifuge Enrichment Capacity Subsidies
*B. Programs Determined Not to Be Used from the Government of the Netherlands*
1. Wet Investeringsrekening Law (WIR)
2. Regional Investment Premium
IV. TOTAL *AD VALOREM* RATE
V. ANALYSIS OF COMMENTS
Comment 1: Net Countervailable Subsidy Rate
Comment 2: Draft Cash Deposit and Liquidation Instructions
Comment 3: Enrichment Services
Comment 4: Allocation Period
Comment 5: Centrifuge Enrichment Capacity Subsidies by the Government of Germany

[FR Doc. E5–3689 Filed 7–11–05; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### International Buyer Program Support for Domestic Trade Shows

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice and call for applications for the International Buyer Program for the period October 1, 2006, through December 31, 2007.

**CONTACT:** Office of Global Trade Programs; Room 2012; Department of Commerce; Washington, DC 20230; tel: (202) 482–4457; Fax: (202) 482–0178.

**SUMMARY:** This notice sets forth objectives, procedures and application review criteria associated with support for domestic trade shows by the International Buyer Program of the U.S. Department of Commerce (DOC). As the program is changing from a fiscal year to a calendar year basis, this announcement covers selection for International Buyer Program participation for Fiscal Year 2007 (October 1, 2006 through September 30, 2007) and the 1st quarter of Fiscal Year 2008 (October 1, 2007 through December 31, 2007).

The International Buyer Program was established to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The International Buyer Program emphasizes cooperation between the DOC and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance such as export counseling and market analysis to U.S. companies interested in exporting. The assistance provided to show organizers includes worldwide overseas promotion of selected shows to potential international buyers, end-users, representatives and distributors.

The worldwide promotion is executed through the offices of the DOC United States and Foreign Commercial Service (hereinafter referred to as the Commercial Service) in more than 70 countries representing America's major trading partners, and also in U.S. Embassies in countries where the Commercial Service does not maintain offices. As the program is changing from a fiscal year to a calendar year basis, the Department expects to select approximately 50 shows for the October 1, 2006 through December 31, 2007 period from among applicants to the program. Shows selected for the International Buyer Program will provide a venue for U.S. companies interested in expanding their sales into international markets. Successful show organizer applicants will be required to enter into a Memorandum of Understanding (MOU) with the DOC.

The MOU constitutes an agreement between the DOC and the show organizer specifying which responsibilities are to be undertaken by DOC as part of the IBP and, in turn, which responsibilities are to be undertaken by the show organizer. Anyone requesting information about applying will be sent a copy of the MOU along with the application package. The responsibilities to be undertaken by DOC will be carried out by the Commercial Service.

**DATES:** Applications must be received within 60 days after the publication date of this **Federal Register** notice. Participation fees (discussed below) are for shows selected and promoted during the period between October 1, 2006, and December 31, 2007.

**ADDRESSES:** International Buyer Program, Global Trade Programs, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW., H2107, Washington, DC 20230. Telephone: (202) 482–0146 (for deadline purposes, facsimile or e-mail applications will be accepted as interim applications, to be followed by signed original applications).

**FOR FURTHER INFORMATION CONTACT:** Jim Boney, Product Manager, International Buyer Program, Room 2114, Global Trade Programs, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230. Telephone (202) 482–0146; Fax: (202) 482–0115; e-mail: *Jim.Boney@mail.doc.gov.*

**SUPPLEMENTARY INFORMATION:** The Commercial Service is accepting applications for the International Buyer Program for events taking place between October 1, 2006, and December 31, 2007. A participation fee of $8,000 for shows of five days or less is required. For shows more than five days in duration, or requiring more than one International Business Center, a participation fee of $14,000 is required.

Under the IBP, the Commercial Service seeks to bring together international buyers with U.S. firms by selecting and promoting in international markets U.S. domestic trade shows covering industries with high export potential. Selection of a trade show is valid for one event, *i.e.,* a trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event. Even if the event occurs more than once in the 15-month period covering this announcement, the trade show organizer must submit a separate application for each event.

The Commercial Service will select approximately 50 events for support between October 1, 2006 and December 31, 2007, inclusive. The Commercial Service will select those events that, in its judgment, most clearly meet the Commercial Service's statutory mandate to promote U.S. exports, especially those of small- and medium-size enterprises, and that best meet selection criteria articulated below.

The Department selects trade shows to be International Buyer Program partners that it determines to be leading international trade shows appropriate for participation by U.S. exporting firms and for promotion in overseas markets by U.S. Embassies and Consulates. Selection as an International Buyer Program partner does not constitute a guarantee by the U.S. Government of the show's success. International Buyer Program partnership status is not an endorsement of the show organizer except as to its international buyer activities. Non-selection should not be viewed as a finding that the event will not be successful in the promotion of U.S. exports.

*Exclusions:* Trade shows that are either first-time or horizontal (non-industry specific) events will not be considered.

*General Selection Criteria:* The Department will select shows to be International Buyer Program partners that, in the judgment of the Department, best meet the following criteria:

(a) *Export Potential:* The trade show promotes products and services from U.S. industries that have high export potential, as determined by DOC sources, *e.g.,* Commercial Service best prospects lists and U.S. export statistics (certain industries are rated as priorities by our domestic and international commercial officers in their Country Commercial Guides).

(b) *International Interest:* The trade show meets the needs of a significant number of overseas markets and corresponds to marketing opportunities as identified by the posts in their Country Commercial Guides (*e.g.* best prospect lists). Previous international attendance at the show may be used as an indicator.

(c) *U.S. Content of Show Exhibitors:* Trade shows with exhibitors featuring a high percentage of U.S. products or products with a high degree of U.S. content will be preferred. Generally, to have ''U.S. content'', products and services to be exhibited should be produced or manufactured in the U.S., or if produced or manufactured outside of the U.S., the products or services should contain more than 50% U.S. content and should be marketed under the name of a U.S. firm.

(d) *Stature of the show:* The trade show is clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services, both domestically and internationally, and as a showplace for the latest technology or services in that industry or sector.

(e) *Exhibitor Interest:* There is demonstrated interest on the part of U.S. exhibitors in receiving international business visitors during the trade show. A significant number of U.S. exhibitors should be new-to-export or seeking to expand sales into additional international markets.

(f) *Overseas Marketing:* There has been a demonstrated effort to market prior shows overseas. In addition, the applicant should describe in detail the international marketing program to be conducted for the event, explaining how efforts should increase individual and group international attendance. (Planned cooperation with Visit USA Committees overseas is desirable.)

(g) *Logistics:* The trade show site, facilities, transportation services, and availability of accommodations are of the stature of an international-class trade show.

(h) *Cooperation:* The applicant demonstrates a willingness to cooperate with the Commercial Service to fulfill the program's goals and to adhere to target dates set out in the MOU and the event timetable, both of which are available from the program office (*see* the **FOR FURTHER INFORMATION CONTACT** section above on when, where, and how to apply). Past experience in the IBP will be taken into account in evaluating current applications to the program.

*Legal Authority:* The Commercial Service has the legal authority to enter into MOUs with show organizers (partners) under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 (MECEA), as amended (22 U.S.C. 2455(f) and 2458 (c)). MECEA allows the Commercial Service to accept contributions of funds and services from firms for the purposes of furthering its mission. The statutory program authority for the Commercial Service to conduct the International Buyer Program is 15 U.S.C. 4724.

The Office of Management and Budget (OMB) has approved the information collection requirements of the application to this program under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 2501 *et seq.*) (OMB Control No. 0625–0151). Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Dated: July 6, 2005.

**Donald Businger,**

*Director, Office of Trade Event Programs, U.S. and Foreign Commercial Service, International Trade Administration, Department of Commerce.*

[FR Doc. E5–3692 Filed 7–11–05; 8:45 am]

**BILLING CODE 3510–FP–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of first request for panel review.

**SUMMARY:** On June 24, 2005, Berg Steel Pipe Corporation filed a First Request for Panel Review with the Mexican Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the antidumping duty determination made by the Secretaria de Economia, respecting Pipe Line Longitudinally Welded with external or internal circle closed section, classified as tariff item 7305.11.01 and 7305.12.01 originating in the United States of America. This determination was published in the *Diario Oficial de la Federacion*, on May 27, 2005. The NAFTA Secretariat has assigned Case Number MEX–USA–2005–1904–01 to this request.

**FOR FURTHER INFORMATION CONTACT:** Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Mexican Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on June 24, 2005, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is July 25, 2005);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is August 8, 2005); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: July 6, 2005.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. E5–3677 Filed 7–11–05; 8:45 am]

**BILLING CODE 3510–GT–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Submission of Conservation Efforts To Make Listings Unnecessary Under the Endangered Species Act

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before September 12, 2005.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Marta Nammack, (301) 713–1401 or *Marta.Nammack@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (Services) announced a final policy on the criteria the Services will use to evaluate conservation efforts by states and other non-Federal entities. The Services take these efforts into account when making decisions on whether to list a species as threatened or endangered under the Endangered Species Act. The efforts usually involve the development of a conservation plan or agreement, procedures for monitoring the effectiveness of the plan or agreement, and an annual report.

#### II. Method of Collection

NMFS does not require, but will accept, plans and reports electronically. NMFS has not developed a form to be used for submission of plans or reports. In the past, NMFS has made plans and annual reports from states available through the Internet and plans to continue this practice.

#### III. Data

*OMB Number:* 0648–0466.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations; and State, local or tribal governments.

*Estimated Number of Respondents:* 3.

*Estimated Time per Response:* 2,500 hours to complete each agreement or plan that has the intention of making listing unnecessary; 320 hours to conduct monitoring for successful agreements; and 80 hours to prepare a report for successful agreements.

*Estimated Total Annual Burden Hours:* 3,300.

*Estimated Total Annual Cost to Public:* $165,000.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 6, 2005.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05–13599 Filed 7–11–05; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 070505B]**

### Endangered Species; File No. 1541

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of application.

**SUMMARY:** Notice is hereby given that Kristen M. Hart, Ph.D., United States Geologic Survey, Florida Integrated Science Center, Center for Coastal & Watershed Studies, has applied in due form for a permit to take green sea turtles (*Chelonia mydas*) for purposes of scientific research.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before August 11, 2005.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1541.

**FOR FURTHER INFORMATION CONTACT:** Patrick Opay or Jason Blackburn, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to capture up to 106 green sea turtles over the course of a three-year permit, utilizing dip nets or pound nets. The pound nets will be set up daily by the researchers, monitored at all times, and taken down when not in use. All 106 turtles will be captured, measured, Passive Integrated Transponder (PIT) and flipper tagged, blood sampled, skin biopsied, oral gastric lavaged, fecal sampled, and released. A subset of these turtles would have satellite or acoustic transmitters attached to their carapace. The purpose of the proposed research is to study juvenile and sub-adult green sea turtles found in the waters of the Big Sable Creek (BSC) complex in Everglades National Park in southwest Florida, to determine whether or not these animals are resident in BSC, or use it as a stopover point during migration; to determine whether the turtles use BSC as a foraging or nursery grounds; to determine the turtles' origin by use of genetic testing; to determine what the turtles forage on while in BSC; to determine their relative abundance over time; to detect changes in sea turtle size and age composition; and to track the turtles using a variety of tagging methods to monitor and document movement and migration patterns.

Dated: July 6, 2005.

**Tammy C. Adams**

*Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 05–13601 Filed 7–11–05; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Technical Information Service

### National Technical Information Service Advisory Board; Solicitation of Applications for National Technical Information Service Advisory Board Membership

**AGENCY:** National Technical Information Service, Commerce.

**ACTION:** Notice.

**SUMMARY:** The National Technical Information Service (NTIS) is seeking qualified candidates to serve as members of the NTIS Advisory Board (Board). The Board will meet at least semiannually to advise the Secretary of Commerce, the Under Secretary for Technology, and the Director of NTIS on NTIS's mission, general policies and fee structure.

**DATES:** Applications must be received no later than August 11, 2005.

**ADDRESSES:** Applications should be submitted to Director, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

**FOR FURTHER INFORMATION CONTACT:** Steven D. Needle (703) 605–6404.

**SUPPLEMENTARY INFORMATION:** The National Technical Information Service (NTIS) is seeking five qualified members to serve as members of its Advisory Board, one of whom will also be designated chairperson. The Board was established pursuant to Section 3704(c) of Title 15, United States Code. It will meet at least semiannually to advise the Secretary of Commerce, the Under Secretary for Technology, and the Director of NTIS on NTIS' mission, general policies and fee structure. Members will be appointed by the Secretary and will serve for three-year terms. They will receive no compensation but will be authorized travel and per diem expenses. NTIS is seeking candidates who can provide guidance on trends in the information industry and changes in the way NTIS's customers acquire and use its products and services. Interested candidates should submit a resume and a statement explaining their interest in serving on the Board.

Dated: June 27, 2005.

**Benjamin H. Wu,**

*Acting Director.*

[FR Doc. 05–13639 Filed 7–11–05; 8:45 am]

**BILLING CODE 3510–04–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Senior Executive Service; Performance Review Board; Membership

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of names of members.

**SUMMARY:** This notice lists the individuals who have been appointed to the Commission's Senior Executive Service Performance Review Board.

**EFFECTIVE DATE:** July 12, 2005.

**ADDRESSES:** Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207.

**FOR FURTHER INFORMATION CONTACT:** Shawn Blain, Office of Human Resources Management, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7220; e-mail *sblain@cpsc.gov*.

Members of the Performance Review Board are listed below:

Thomas W. Murr, Jr.,
Gregory Rodgers,
John Gibson Mullan,
Patrick D. Weddle,
Mary Ann T. Danello (alternate),
Jacqueline Elder (alternate),
Hugh M. McLaurin (alternate),
Joseph Mohorovic (alternate),
Marc Schoem (alternate),
Andrew G. Stadnik (alternate),
Patricia M. Semple (alternate),
Page C. Faulk (advisory member),
Donna Simpson (executive secretary).

Alternate members may be designated by the Chairman or the Chairman's designee to serve in the place of regular members who are unable to serve for any reason.

Dated: July 1, 2005.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 05–13590 Filed 7–11–05; 8:45 am]

**BILLING CODE 6355–01–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0080]**

### Federal Acquisition Regulation; Information Collection; Integrity of Unit Prices

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0080).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning integrity of unit prices. This OMB clearance currently expires on September 30, 2005.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before September 12, 2005.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Jerry Olson, Contract Policy Division, GSA (202) 501–3221.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

FAR 15.408(f) and the clause at FAR 52.215–14, Integrity of Unit Prices, require offerors and contractors under Federal contracts that are to be awarded without adequate price competition to identify in their proposals those supplies which they will not manufacture or to which they will not contribute significant value. The policies included in the FAR are required by section 501 of Public Law 98–577 (for the civilian agencies) and section 927 of Public Law 99–500 (for DOD and NASA). The rule contains no reporting requirements on contracts with commercial items.

**B. Annual Reporting Burden**

*Respondents:* 1,000.
*Responses Per Respondent:*10.
*Annual Responses:*10,000.
*Hours Per Response:* 1 hour.
*Total Burden Hours:* 10,000.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0080, Integrity of Unit Prices, in all correspondence.

Dated: July 1, 2005

**Gerald Zaffos**

*Acting Director, Contract Policy Division*

[FR Doc. 05–13640 Filed 7–11–05; 8:45 am]

**BILLING CODE 6820–EP–S**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0071]**

### Federal Acquisition Regulation; Information Collection; Price Redetermination

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0071).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning price redetermination. The clearance currently expires on September 30, 2005.

Public comments are particularly invited on: Whether this collection of nformation is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate

technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before September 12, 2005.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Jerry Zaffos, Contract Policy Division, GSA (202) 208–6091.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

Fixed-price contracts with prospective price redetermination provide for firm fixed prices for an initial period of the contract with prospective redetermination at stated times during performance. Fixed price contracts with retroactive price redetermination provide for a fixed ceiling price and retroactive price redetermination within the ceiling after completion of the contract. In order for the amounts of price adjustments to be determined, the firms performing under these contracts must provide information to the Government regarding their expenditures and anticipated costs. The information is used to establish fair price adjustments to Federal contracts.

**B. Annual Reporting Burden**

*Respondents:* 3,500.

*Responses Per Respondent:* 2.

*Annual Responses: 7,000.*

*Hours Per Response*: 1.

*Total Burden Hours:* 7,000.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0071, Price Redetermination, in all correspondence.

Dated: July 1, 2005

**Gerald Zaffos,**

*Acting Director, Contract Policy Division*

[FR Doc. 05–13641 Filed 7–11–05; 8:45 am]

**BILLING CODE 6820–EP–S**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0082]**

### Federal Acquisition Regulation; Information Collection; Economic Purchase Quantities–Supplies

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0082).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning economic purchase quantities–upplies. This clearance currently expires on September 30, 2005.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before September 12, 2005.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Jerry Zaffos, Contract Policy Division, GSA (202) 208–6091.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The provision at 52.207–4, Economic Purchase Quantities–Supplies, invites offerors to state an opinion on whether the quantity of supplies on which bids, proposals, or quotes are requested in solicitations is economically advantageous to the Government. Each offeror who believes that acquisitions in different quantities would be more advantageous is invited to (1) recommend an economic purchase quantity, showing a recommended unit and total price, and (2) identify the different quantity points where significant price breaks occur. This information is required by Public Law 98–577 and Public Law 98–525.

**B. Annual Reporting Burden**

*Respondents:* 1,524.
*Responses Per Respondent:* 25.
*Annual Responses:* 38,100.
*Hours Per Response:* .83.
*Total Burden Hours:* 31,623.
*Obtaining Copies of Proposals*: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0082, Economic Purchase Quantities–Supplies, in all correspondence.

Dated: July 1, 2005

**Gerald Zaffos**

*Acting Director, Contract Policy Division*

[FR Doc. 05–13642 Filed 7–11–05; 8:45 am]

**BILLING CODE 6820–EP–S**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0107]**

### Federal Acquisition Regulation; Information Collection; Notice of Radioactive Materials

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning notice of radioactive

materials. The clearance currently expires on September 30, 2005.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before September 12, 2005.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0107, Notice of Radioactive Materials, in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Marshall, Contract Policy Division, GSA (202) 219–0986.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The clause at FAR 52.223–7, Notice of Radioactive Materials, requires contractors to notify the Government prior to delivery of items containing radioactive materials. The purpose of the notification is to alert receiving activities that appropriate safeguards may need to be instituted. The notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the contractor which will put users of the items on notice as to the hazards involved.

**B. Annual Reporting Burden**

*Respondents:* 500.
*Responses Per Respondent*: 5.
*Annual Responses:* 2,500.
*Hours Per Response*: 1.
*Total Burden Hours:* 2,500.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0107, Notice of Radioactive Materials, in all correspondence.

Dated: July 1, 2005

**Julia B. Wise**

*Director, Contract Policy Division*

[FR Doc. 05–13667 Filed 7–11–05; 8:45 am]

**BILLING CODE 6820–EP–S**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 11, 2005.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: July 6, 2005.

**Angela C. Arrington,**

*Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.*

**Office of Elementary and Secondary Education**

*Type of Review:* New.

*Title:* Binational Migrant Education Program (BMEP) State MEP Director Survey.

*Frequency:* Annually.

*Affected Public:* State, local, or tribal gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 52.

Burden Hours: 52.

*Abstract:* The survey collects information from State Migrant Education Programs (MEPs) on their participation in the Binational Migrant Education Program (BMEP) to serve children who migrate between Mexico and the U.S.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2755. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–13638 Filed 7–11–05; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of final priority (NFP) for children with special health care needs.

**SUMMARY:** The Assistant Secretary for Special Education and Rehabilitative Services announces a funding priority for the National Institute on Disability and Rehabilitation Research's (NIDRR) Disability and Rehabilitation Research Projects and Centers Program, Rehabilitation Research and Training Centers (RRTC) program. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2005 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

**DATES:** This priority is effective August 11, 2005.

**FOR FURTHER INFORMATION CONTACT:** Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:**

### Rehabilitation Research and Training Centers

RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for persons with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC*.

### General Requirements of Rehabilitation Research and Training Centers

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the RRTC. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment of approved grant objectives.

### Analysis of Comments and Changes

We published a notice of proposed priority (NPP) for this program in the **Federal Register** on April 18, 2005 (70 FR 20219). Page 20221 of the NPP included a background statement that described our rationale for proposing this priority.

In response to our invitation in the NPP, one party submitted a comment on the proposed priority. An analysis of the comment and our response follows.

Generally, we do not address technical and other minor changes and suggested changes we are not authorized to make under the applicable statutory authority.

*Comment:* One commenter stated that all children with disabilities have special health care needs, and that children with disabilities are included in the Maternal and Child Health Bureau's operationalization of the concept of ''children with special health care needs.'' The commenter asked whether the priority targets only ''children with disabilities'' or the broader population of ''children with special health care needs,'' and noted that the latter includes children who do not have a current disability but who are at risk of developing one. The commenter stated that focusing on the broader population makes greater sense as it allows building in a prevention perspective to the work of the RRTC.

*Discussion:* The target population is specific to children who have both a disability and special health care needs. We acknowledge that there is frequent overlap between children with disabilities and children with special health care needs. However, we also acknowledge that not every child with a special health care need necessarily has a disability, and that not every child with a disability necessarily has significant health care needs beyond those required by children generally. This priority specifies ''children with disabilities'' with special health care needs in order to highlight the disability focus within the broader group of children with special health care needs. This focus on disability includes the interaction of personal and environmental factors impacting the experience of function and disability. This priority does not target children who do not currently have a disability but who are at risk for developing one. However, it could target children who have both a disability and special health care needs who are at risk for developing additional disabilities. In their applications, applicants will be expected to specify their target population and explain the basis for their decision. The peer review process will evaluate the merits of the proposals.

*Change:* None.

**Note:** This notice does *not* solicit applications. In any year in which we choose to use this final priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of the priority follows:

*Absolute priority:* Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

*Competitive preference priority:* Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive

preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational priority:* Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

**Note:** NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.*

The final priority is in concert with NIDRR's 1999–2003 Long-Range Plan (Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. Applicants will find many sections throughout the Plan that support potential research to be conducted under the final priority. The references to the topic of this priority may be found in the Plan, Chapter 4, Health and Function and Chapter 6, Independent Living and Community Integration. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/rschstat/research/pubs/index.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

*Priority*

The Assistant Secretary intends to fund a priority for one RRTC that must focus on children with disabilities and special health care needs. Applicants must demonstrate how their research and development activities will meet the needs of individuals from traditionally underserved populations including, but not limited to, children from low-income backgrounds.

The RRTC must conduct at least two, but not more than four, of the following research activities:

- Identify, develop, and evaluate models and strategies for implementing effective community-based practices for children with disabilities who have special health care needs;
- Identify, develop, and evaluate models and strategies for effective transition of children and adolescents with disabilities who have special health care needs to adulthood, including access to adult health care services, personal assistance services, and full participation in community life;
- Identify and evaluate strategies for maximizing family partnership and decision-making related to access to and use of home- and community-based services for children with disabilities who have special health care needs;
- Identify and evaluate innovative and effective strategies for facilitating access to service delivery for children with disabilities who have special health care needs, including health care reimbursement, assistive technology, and other specialized rehabilitative services (*e.g.*, physical therapy, occupational therapy, telehealth); and
- Identify and evaluate innovative and effective models for establishing coordination within the service delivery system for children with disabilities who have special health care needs.

In addition to the activities proposed by the applicant to carry out this priority, each RRTC must—

- Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle. This conference must include materials from experts internal and external to the RRTC;
- Involve individuals with disabilities in planning and implementing its research, training, and dissemination activities, and in evaluating the RRTC;
- Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer; and
- Identify anticipated outcomes (*i.e.*, advances in knowledge and/or changes and improvements in policy, practices, behavior, and system capacity) that are linked to the applicant's stated grant objectives.

**Executive Order 12866**

This NFP has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the NFP are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this NFP, we have determined that the benefits of the final priority justify the costs.

*Summary of potential costs and benefits:* The potential costs associated with this final priority are minimal while the benefits are significant. Grantees may incur some costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of Grants.gov technology reduces mailing and copying costs significantly.

The benefits of the RRTC program have been well established over the years in that similar projects have been completed successfully. This final priority will generate new knowledge and technologies through research, development, dissemination, utilization, and technical assistance projects.

Another benefit of this final priority is that the establishment of a new RRTC will support the President's NFI and will improve the lives of persons with disabilities, in particular promoting research and development activities for children with disabilities and special health care needs. The new RRTC will generate, disseminate, and promote the use of new information that will improve options for children with disabilities and special health care needs, their families, and caregivers.

*Applicable Program Regulations:* 34 CFR part 350.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133B Rehabilitation Research and Training Centers Program)

**Program Authority:** 29 U.S.C. 762(g) and 764(b)(2).

Dated: July 6, 2005.

**John H. Hager,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 05–13678 Filed 7–11–05; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Rehabilitation Research and Training Centers (RRTC); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.133B–1.

*Dates: Applications Available:* July 12, 2005.

*Deadline for Transmittal of Applications:* September 12, 2005.

*Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

*Estimated Available Funds:* $800,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $800,000 for a single budget period of 12 months.

**Note:** The maximum amount includes direct and indirect costs. The maximum allowable indirect cost rate is 15 percent.

*Number of Awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. For FY 2005, the competition for new awards focuses on projects designed to meet the priority we describe in the *Priority* section of this notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

*Priority:* This priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

*Absolute Priority:* For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

*Children With Disabilities And Special Health Care Needs.* The general and specific requirements for meeting this priority are in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

**Program Authority:** 29 U.S.C. 762(g) and 764(b)(2).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97; (b) the regulations for this program in 34 CFR part 350; and (c) the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

**Note:** The regulations in 34 CFR part 86 apply to IHEs only.

**II. Award Information**

*Type of Award:* Discretionary grant.

*Estimated Available Funds:* $800,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $800,000 for a single budget period of 12 months.

**Note:** The maximum amount includes direct and indirect costs. The maximum allowable indirect cost rate is 15 percent.

*Number of Awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

**III. Eligibility Information**

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

**IV. Application and Submission Information**

1. *Address to Request Application Package:* You may obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133B–1.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We strongly recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single space may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application.

3. *Submission Dates and Times: Applications Available:* July 12, 2005.

*Deadline for Transmittal of Applications:* September 12, 2005.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For

information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 7. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Pre-Application Meeting:* Interested parties are invited to participate in a pre-application meeting to discuss the funding priority and to receive information and technical assistance through individual consultation about the funding priority. The pre-application meeting will be held on August 4, 2005. Interested parties may participate in this meeting either in person or by conference call at the U.S. Department of Education, Office of Special Education and Rehabilitative Services, Potomac Center Plaza, room 6075, 550 12th Street, SW., Washington, DC between 10 a.m. and 12 noon. After the meeting, NIDRR staff also will be available from 1:30 p.m. to 4 p.m. on that same day to provide information and technical assistance through individual consultation about the funding priority. For further information or to make arrangements to attend either in person or by conference call, or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza, room 6030, 550 12th Street, SW., Washington, DC 20202. Telephone (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

*Assistance to Individuals With Disabilities at the Pre-Application Meeting*

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you will need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (*e.g.*, other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

7. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government-wide Grants.gov Apply site in FY 2005. The Rehabilitation Research Training Centers Program—CFDA Number 84.133B–1 is one of the programs included in this project.

If you choose to submit your application electronically, you must use the Grants.gov Apply site (Grants.gov). Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us. We request your participation in Grants.gov.

You may access the electronic grant application for the Rehabilitation Research Training Centers Program-CFDA Number 84.133B–1 at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted with a date/time received by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. We will not consider your application if it was received by the Grants.gov system later than 4:30 p.m. on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was submitted after 4:30 p.m. on the application deadline date.
- If you experience technical difficulties on the application deadline date and are unable to meet the 4:30 p.m., Washington, DC time, deadline, print out your application and follow the instructions in this notice for the submission of paper applications by mail or hand delivery.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that your application is submitted timely to the Grants.gov system.
- To use Grants.gov, you, as the applicant, must have a D-U-N-S Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five business days to complete the CCR registration.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Any narrative sections of your application must be attached as files in a .DOC (document), .RTF (rich text) or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

*By mail through the U.S. Postal Service:* U.S. Department of Education,

Application Control Center, Attention: (CFDA Number 84.133B–1), 400 Maryland Avenue, SW., Washington, DC 20202–4260;

or

*By mail through a commercial carrier:* U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133B–1), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–1), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

*Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

*Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54. The specific selection criteria to be used for this competition are listed in the application package.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

**Note:** NIDRR will provide information by letter to grantees on how and when to submit this report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert program review, a portion of its grantees to determine:

- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific methods, and builds on and contributes to knowledge in the field;
- The number of discoveries, analyses, and standards developed and/or tested with NIDRR funding that are judged by expert panels to advance understanding of key concepts, issues, and emerging trends and strengthen the evidence base for disability and rehabilitation policy, practice, and research;
- The number of new or improved tools and methods developed and/or tested with NIDRR funding that are judged by expert panels to improve measurement and data collection procedures and enhance the design and evaluation of disability and rehabilitation interventions, products, and devices;
- The percentage of new studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods; and
- The number of non-academic and consumer-oriented dissemination publications and products, nominated by grantees to be their best outputs based on NIDRR funded research and related activities, that demonstrate ''good to excellent'' utility for intended beneficiaries.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR:

- The number of publications in refereed journals that are based on NIDRR-funded research and development activities; and
- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals.

The Department's program performance reports, which include information on NIDRR programs, are available on the U.S. Department of Education Web site: *http://www.ed.gov/offices/OUS/PES/planning.html*.

Updates on the GPRA indicators, revisions, and methods appear in the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm*.

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone:

(202) 245–7462 or by e-mail: *donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

**VIII. Other Information**

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: July 6, 2005.

**John H. Hager,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 05–13679 Filed 7–11–05; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children with Disabilities—Model Demonstration Centers on Progress Monitoring (CFDA No. 84.326M)

**ACTION:** Notice inviting applications for new awards for FY 2005; correction.

**SUMMARY:** On June 30, 2005, we published in the **Federal Register** (70 FR 37789) a notice inviting applications for new awards for FY 2005 for the Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—Model Demonstration Centers on Progress Monitoring Program. The notice contained incorrect dates.

On page 37789, third column, the date listed for *Deadline for Intergovernmental Review* is corrected to read ''August 18, 2005.'' On page 37792, first column, the date listed for *Deadline for Transmittal of Applications* is corrected to read ''August 8, 2005.'' On page 37792, second column, the date listed for *Deadline for Intergovernmental Review* is corrected to read ''August 18, 2005.''

**FOR FURTHER INFORMATION CONTACT:** Grace Duran, U.S. Department of Education, 400 Maryland Avenue, SW., room 4088, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7328.

If you use a telecommunications device for the deaf (TTD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: July 6, 2005.

**John H. Hager,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 05–13693 Filed 7–11–05; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Community Technology Centers Program

**AGENCY:** Office of Vocational and Adult Education, Department of Education.

**ACTION:** Notice of final changes to requirements.

**SUMMARY:** The Assistant Secretary for Vocational and Adult Education announces changes to certain requirements governing the Community Technology Centers (CTC) program that the Department established in 2004 and used for the fiscal year (FY) 2004 CTC competition. Specifically, the Assistant Secretary is removing the following two requirements: (1) That novice and non-novice applicants in CTC competitions be ranked and funded separately, and (2) that at least 75 percent of the funds be set aside for non-novice applicants and up to 25 percent of the funds be set aside for novice applicants. The Assistant Secretary will abide by the revised requirements in making awards in FY 2005 from the list of unfunded applicants from the FY 2004 CTC competition.

**DATES:** This notice of final changes to requirements is effective August 11, 2005.

**FOR FURTHER INFORMATION CONTACT:** Karen Holliday, U.S. Department of Education, Office of Vocational and Adult Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Room 11089, Washington, DC 20202–7241. Telephone: (202) 245–7708 or via e-mail: *karen.holliday@ed.gov.* Please type ''CTC Notice Correspondence'' as the subject line of your electronic message.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

**Note:** This notice does not solicit applications.

**SUPPLEMENTARY INFORMATION:**

**Background**

As authorized by title V, part D, subpart 11, of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA), the purpose of the CTC program is to assist eligible applicants to create or expand

community technology centers that provide disadvantaged residents of economically distressed urban and rural communities with access to information technology and related training.

In 2004, the Department held a CTC competition with FY 2004 funds, in which it used the requirements, priorities, and selection criteria that it had established through a notice of final requirements, priorities, and selection criteria for novice and non-novice applicants for the CTC program, published in the **Federal Register** on April 16, 2004 (69 FR 20766). Under those final requirements, the Department ranked and funded separately two sets of applicants—novice applicants and non-novice applicants—that met the established absolute priorities. The Department set aside approximately 75 percent of the funds for non-novice applicants and approximately 25 percent of the funds for novice applicants.

During the 2004 CTC competition, the Department received nearly 500 applications in response to the FY 2004 notice inviting applications. Because of the separate ranking of novice and non-novice applicants and the set-aside requirements, a number of high-quality applications received through the FY 2004 CTC competition were not funded. Accordingly, the Department intends to make awards for FY 2005 based on the list of unfunded applicants from the FY 2004 CTC competition without regard to the set-aside provisions.

**Analysis of Comments and Changes**

On May 4, 2005, the Department published a notice of proposed changes to requirements in the **Federal Register** (70 FR 23142). In response to the notice of proposed changes to requirements, 12 parties submitted comments. An analysis of the comments on the notice of proposed changes follows.

Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize us to make under the applicable statutory authority.

*Comments:* Several commenters stated that they would like the Department to fund current CTC grantees, as well as FY 2004 unfunded applicants.

*Discussion:* The purpose of the CTC program is to assist eligible applicants to create or expand community technology centers that provide disadvantaged residents of economically distressed urban and rural communities with access to information technology and related training. In order to reach additional needy communities, the Assistant Secretary has determined that the best policy for the Department in FY 2005 is to fund additional high-quality applications and that a sufficient number of high-quality 2004 applications remain available for funding.

*Changes:* None.

*Comments:* Two commenters stated that they are concerned about the status of unfunded applicants' current budget, partnerships, and other resource capabilities due to the significant lapse of time since these applicants submitted their application materials to the Department for the 2004 CTC competition.

*Discussion:* Prior to awarding FY 2005 CTC grant funds, we will contact the highest ranked FY 2004 unfunded applicants to verify that applicants remain interested in receiving a grant to carry out the project outlined in their application, have the personnel and other resources needed to implement their project, and can meet the other requirements of the program. If an applicant cannot meet that test, the Department will contact the next applicant on the slate.

*Changes:* None.

*Comments:* Several commenters stated that they want the Department to conduct a new competition for FY 2005 in order to fund the highest-quality projects.

*Discussion:* The Department received nearly 500 applications in response to the FY 2004 notice inviting applications for the CTC program. With the $9.5 million available in FY 2004, the Department awarded 25 grants. The Assistant Secretary has determined that a sufficient number of high-quality FY 2004 applications remain available for funding.

*Changes:* None.

*Comments:* Several commenters recommended that the Department continue to distinguish between novice and non-novice applicants.

*Discussion:* In order to ensure that the Department funds the highest-quality applications and for the reasons stated in the notice of proposed changes to requirements, we continue to believe that we should select for funding unfunded applicants from the FY 2004 competition irrespective of their novice or non-novice status.

*Changes:* None.

**Target Applicants**

We will change two of the requirements of the CTC competition held in 2004, so that the Department is no longer required to: (1) Rank and fund novice and non-novice applicants separately, and (2) set aside at least 75 percent of the funds for non-novice applicants and up to 25 percent of the funds for novice applicants that met the absolute priorities.

For FY 2005, we will make awards from the list of unfunded applicants from the FY 2004 competition in the highest-ranking order, using the same priorities and selection criteria and irrespective of the novice or non-novice status of applicants.

**Executive Order 12866**

This notice of final changes to requirements has been reviewed in accordance with Executive Order 12866. Under the terms of this order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final changes to requirements are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of changes to requirements, we have determined that the benefits of the change to the requirements governing the FY 2004 CTC competition justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

**Intergovernmental Review**

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.341—Community Technology Centers Program)

**Program Authority:** 20 U.S.C. 7263–7263b.

Dated: July 7, 2005.

**Susan Sclafani,**

*Assistant Secretary for Vocational and Adult Education.*

[FR Doc. 05–13688 Filed 7–11–05; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

**[Docket Nos. EA–63–C]**

### Application to Export Electric Energy; Northern States Power Company

**AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Northern States Power Company (NSP) has applied to amend its authorization to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before July 27, 2005.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability (Mail Code OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–1472).

**FOR FURTHER INFORMATION CONTACT:** Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On March 6, 1979, the Department of Energy (DOE) issued Presidential Permit PP–63 authorizing NSP to construct, operate, maintain, and connect a 500,000-volt (500-kV) electric transmission line that extends from Roseau County, Minnesota, across the U.S. border with Canada, and connecting to similar facilities owned by Manitoba Hydro Electric Board, the Provincial electric utility of Canada's Province of Manitoba. In a related proceeding, on August 13, 1979, in Order No. EA–63, DOE authorized NSP to export electric energy to Canada using the PP–63 facilities. The Presidential permit and electricity export authorization have each been subsequently amended and NSP is now authorized to export electric energy to Canada, using the PP–63 facilities, at a rate not to exceed an instantaneous rate of transmission of 500 megawatts (MW).

On February 6, 2002, in Order No. PP–231, DOE authorized NSP (doing business as Excel Energy Incorporated (Xcel)) to construct, operate, maintain and connect a 230-kV transmission line that extends approximately 53 miles from a new substation built in Rugby, North Dakota, to the U.S. border with Canada. At the border the PP–231 facilities connect to similar facilities of Manitoba Hydro and continue an additional 50 miles into Canada to an existing substation located in Glenboro, Manitoba. A separate electricity export authorization was not issued in association with this transmission facility.

In OE Docket EA–63–C, NSP has now applied to DOE to further amend Order EA–63 to authorize electricity exports to Canada using a combination of the PP–63 and PP–231 transmission lines, at a maximum transmission rate of 700 MW on a firm (*e.g.*, non-interruptible) basis and at 1050 MW on a non-firm (*e.g.*, as available) basis.

*Procedural Matters:* Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the NSP application to export electric energy to Canada should be clearly marked with Docket EA–63–C. Additional copies are to be filed directly with Northern States Power Company, c/o Xcel Energy Inc., Attn: Director, Contract Administration, 1099 18th Street, Suite 3000, Denver, CO 80202 and Northern States Power Company, c/o Xcel Energy Inc., Attn: James P. Johnson, 800 Nicollet Mall, Suite 2900, Minneapolis, MN 55401 and Northern States Power Company, c/o Xcel Energy Inc., Attn: James Alders, 414 Nicollet Mall—5th Floor, Minneapolis, MN 55401 and Northern States Power Company, c/o Xcel Energy Inc., Attn: Thomas R. McDonough, 414 Nicolle Mall—RSQ 5, Minneapolis, MN 55401.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's home page at *http://www.fe.doe.gov.* Upon reaching the program's home page select ''Electricity Regulation'', then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on July 6, 2005.

**Anthony J. Como,**

*Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. 05–13632 Filed 7–11–05; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

**[Docket No. EA–282–A]**

### Application To Export Electric Energy; Northern States Power Company

**AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Northern States Power Company (NSP) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before August 11, 2005.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability (Mail Code OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (fax (202) 287–5736).

**FOR FURTHER INFORMATION CONTACT:** Xavier Puslowski (Program Office) (202) 586–4708 or Michael Skinker (Program Attorney) (202) 586–2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On August 19, 2003, the Department of Energy (DOE) issued Order No. EA–282 which authorized NSP to transmit electric energy from the United States to

Canada as a power marketer. That Order will expire on August 19, 2005.

On June 7, 2005, NSP filed an application with DOE for renewal of the export authority contained in Order No. EA–282 for a five-year term. NSP proposes to export electric energy to Canada and to arrange for the delivery of those exports over the international transmission facilities presently owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, Vermont Electric Power Company, Inc. and Vermont Electric Transmission Company.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by NSP, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

*Procedural Matters:* Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the NSP application to export electric energy to Canada should be clearly marked with Docket EA–282–A. Additional copies are to be filed directly with Manager, Contract Administration, Northern States Power Company, 1099 18th Street, Suite 3000, Denver, CO 80202.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's Home Page at *http://www.fe.doe.gov.* Upon reaching the Home page, select ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on July 6, 2005.

**Anthony J. Como,**

*Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. 05–13633 Filed 7–11–05; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OAR–2004–0237; FRL–7936–5]**

### Animal Feeding Operations Consent Agreement and Final Order

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Supplemental notice; reopening of signup period for consent agreement and final order.

**SUMMARY:** On January 31, 2005 (70 FR 4958), EPA announced an opportunity for animal feeding operations (AFO) to sign a voluntary consent agreement and final order (air compliance agreement). This supplemental notice announces an extension to the signup period for the consent agreement and final order.

**DATES:** The signup period is extended to July 29, 2005.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. OAR–2004–0237. All documents in the docket are listed in the index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at: Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** For information on the air compliance agreement, contact Mr. Bruce Fergusson, Special Litigation and Projects Division, Office of Enforcement and Compliance Assurance, U.S. EPA, Ariel Rios Building, Washington, DC 20460, telephone number (202) 564–1261, fax number (202) 564–0010, and electronic mail: *fergusson.bruce@epa.gov.*

For information on the monitoring study, contact Ms. Sharon Nizich, Organic Chemicals Group, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2825, fax number (919) 541–3470, and electronic mail: *nizich.sharon@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In order to provide more time for operators of animal feeding facilities to make informed decisions about participation, EPA is extending the sign-up period for the Animal Feeding Operation Air Compliance Agreement until July 29, 2005. The Agreement addresses emissions from certain animal feeding operations, also known as AFO. EPA will continue to reach out to the agricultural community during this time.

The response to comments document is published in a separate **Federal Register** notice and can also be found on the Agency's Web site at *http://www.epa.gov/compliance/resources/agreements/caa/cafo-agr-response-com.html.*

Dated: June 30, 2005.

**Sally Shaver,**

*Director, Emission Standards Division, Office of Air Quality Planning and Standards.*

Dated: July 5, 2005.

**Robert A. Kaplan,**

*Director, Special Litigation and Projects Division, Office of Civil Enforcement and Compliance Assurance.*

[FR Doc. 05–13671 Filed 7–11–05; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OAR–2004–0237; FRL–7936–4]**

### Animal Feeding Operations Consent Agreement and Final Order

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Supplemental notice; response to comments on consent agreement and final order.

**SUMMARY:** On January 31, 2005 (70 FR 4958), EPA announced an opportunity for animal feeding operations (AFO) to sign a voluntary consent agreement and final order (air compliance agreement).

The comment period ended May 2, 2005. This supplemental notice publishes the Agency's response to comments.

**ADDRESSES:** Comments are posted on Docket ID No. OAR–2004–0237 at the Agency Web site: *http://www.epa.gov/edocket.*

*Docket:* All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form at Docket ID No. OAR–2004–0237, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** For information on the air compliance agreement, contact Mr. Bruce Fergusson, Special Litigation and Projects Division, Office of Enforcement and Compliance Assurance, U.S. EPA, Ariel Rios Building, Washington, DC 20460, telephone number (202) 564–1261, fax number (202) 564–0010, and electronic mail: *fergusson.bruce@epa.gov.*

For information on the monitoring study, contact Ms. Sharon Nizich, Organic Chemicals Group, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park NC 27711, telephone number (919) 541–2825, fax number (919) 541–3470, and electronic mail: *nizich.sharon@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On January 31, 2005, EPA published a notice in the **Federal Register** announcing an Air Compliance Agreement (the Agreement) AFO, and requested public comment on the Agreement. The original comment period ran until March 2, 2005. The comment period was subsequently reopened on April 1, 2005, and ran until May 2, 2005. EPA received approximately 800 separate sets of comments.

The development of the Agreement was an open and extensive process, both before and after the January 31, 2005, publication in the **Federal Register**. Prior to that announcement, EPA worked with numerous stakeholders for 3 years to develop the Agreement. Agency officials met and received input from representatives from all the relevant AFO industry groups, State officials, national and local environmental groups, and local citizen groups. EPA provided copies of prior drafts of the Agreement to these groups, and received comments. EPA made changes to the draft Agreement in response to concerns raised during the development of the Agreement. The vast majority of comments received during the public comment periods were ones that had been previously expressed to EPA, and they had already been considered in the development of the Agreement.

After the Agreement was published in the **Federal Register**, EPA continued to meet with various stakeholders from the AFO industry, States, environmental groups, and local citizen groups regarding the Agreement. Many informative meetings were held around the Nation to discuss the Agreement with stakeholders. EPA has reviewed all comments and has determined that no changes are needed to the current version of the Agreement. The two most frequent concerns raised were the need for more time to provide comments and for more time to consider whether to sign the Agreement. These two concerns were addressed with the reopening of the comment period and the extension of the signup period by 60 days until July 1, 2005. In addition, EPA is now extending the signup period a final time until July 29, 2005.

EPA has identified a number of common concerns in the comments and responds to each below. Additional information can be found on EPA's website in documents including the ''Fact Sheet,'' ''Frequently Asked Questions,'' and the ''Agreement Sign-Up Instructions.''

*Comment:* Emergency Planning Community Right-to-Know Act/ Comprehensive Environmental Response, Compensation and Liability Act (EPCRA/CERCLA) Applicability.

Many commenters from the poultry industry suggested that EPCRA and CERCLA were not intended to regulate the agriculture industry, and that the Agency should exempt these sources from reporting. Other commenters claimed that, to the contrary, it was essential for these emissions to be reported to the National Response Center and local emergency response centers in order to provide the public with information regarding quantities of ammonia emissions released from nearby agricultural operations.

*Response:* AFO may be subject to the notification requirements of CERCLA for releases of hazardous substances from their facilities. Generally, CERCLA section 103 requires a person in charge of a ''facility'' to report any release, including air emissions, of a hazardous substance from the facility if the release exceeds the reportable quantity (RQ) for that substance. Section 101(9) of CERCLA defines a facility to include: ''(A) any building, structure, installation, equipment, pipe or pipeline * * * well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or, (B) any structure, installation * * *. ditch, landfill (or) site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.'' CERCLA hazardous substances of particular concern to the AFO industry typically are ammonia and hydrogen sulfide. Both of these hazardous substances have a reportable quantity of 100 pounds. CERCLA 103 requires any person in charge of a facility, as soon as they have knowledge of a release in an amount equal to or greater than the RQ from their facility, to immediately notify the National Response Center of such a release. EPCRA section 304 requires the same notification to State emergency response commissions and local emergency planning committees when CERCLA 103 is triggered in order to protect and expand public right-to-know interests.

To date, AFO that have reported to the National Response Center generally have reported estimated emissions coming from their barns and lagoons. In addition, AFO have the option of submitting a single, written report that characterizes continuous release reporting from their facilities. This ''continuous release report'' is the least burdensome form of reporting.

The Agency is aware of the concerns expressed and is committed to streamline the notifications so that they impose the least amount of burden for the reporting entities. EPA is particularly sensitive to the need for more specific triggering thresholds for CERCLA. One of the goals of the Agreement's 2-year monitoring study is to determine a more specific range of operations/species-specific release sizes that would trigger CERCLA and EPCRA.

In addition, the Agency has not received a formal request to consider a CERCLA administrative reporting exemption specifically for AFO for ammonia and/or hydrogen sulfide reporting.

*Comment:* Impact on State Actions.

Commenters noted that the Agency should clarify whether respondents will be shielded from future State lawsuits by signing this Agreement. A number of State commenters voiced concerns about the effect of the Agreement on State efforts to enforce against AFO. The primary objection was that the Agreement may undercut action of State, local, or tribal authorities

attempting to enforce their own authorities against AFO.

*Response:* The Agreement has no impact on the most important State enforcement tools to protect local residents from AFO emissions. These include zoning classification, State (non-Federally enforceable) permits, nuisance actions, workplace regulations and health and safety laws. Further, the Agreement does not impact any actions to abate odors because there are no Federal Clean Air Act (CAA) odor control regulations. The Agreement does not and is no way intended to undermine the State, local or tribal enforcement authorities. The Agreement does not affect any requirements that do not arise under CERCLA, EPCRA, or a federally-approved CAA State implementation plan. Prior to the Agreement, very few actions were brought against AFO for air emissions under the authorities set out in the Agreement. The great majority of enforcement came about under regulations that are not impacted by the Agreement. Concerns that the Agreement could affect the ability of regulators to protect the health and safety of local residents are unfounded. The Agreement does not affect the ability of any regulator to bring an action under the emergency provisions of the CAA and other statutes to prevent an imminent and substantial endangerment to public health, welfare or the environment.

The Agreement augments and improves State and local control in several respects. First, emissions data generated by the nationwide emissions study will be available to the public during the study. EPA's publication of emissions—estimating methodologies will also assist and guide State, local and tribal efforts. In December 2002, the National Academy of Sciences released a report concluding that scientifically sound and practical protocols for measuring air concentrations and emissions rates were needed to guide regulatory and enforcement decisions. The data collected by this study, along with EPA's analyses, will be a helpful step for all in answering the concerns of the National Academy of Sciences. Second, participating farms which need to obtain Prevention of Significant Deterioration/New Source Review (PSD/NSR) permits at the conclusion of the study will submit applications to the States. The Agreement explicitly does not limit a State or local government's authority to impose applicable permitting requirements. In addition, the covenant not to sue will be nullified if AFO fail to comply with State nuisance final orders arising from air emissions. Finally, a number of States are undertaking their own programs to address air emissions from AFO. These efforts range from mandatory permit programs to voluntary, cooperative approaches with industry. The Agreement is not intended to preempt or otherwise interfere with these efforts. Nothing in the Agreement absolves a failure to comply with non-federally enforceable State law, nor prohibits participation in other compliance programs.

*Comment:* Length of Implementation Schedule.

Several commenters expressed concern that major agricultural sources of air pollution may not be required to install emission control technology until 2010 or later under the Agreement. These commenters claim that such facilities are already having a significant negative impact on nearby residents and on local and regional air quality and, therefore, they should take immediate steps to reduce their emissions.

*Response:* Under the Agreement, the national air emissions monitoring study will be conducted for 2 years, most likely starting in early 2006. At the end of the monitoring study in early 2008, EPA will have eighteen months to develop and publish emissions-estimating methodologies for AFO. Within 120 days after EPA has published an emissions-estimating methodology for a particular farm, the farm will have to submit all required CAA permit applications. Installation of controls required by any permits will be in accordance with the deadlines established by the relevant State permitting authority.

EPA believes that the above schedule represents the most aggressive schedule that is reasonably possible. EPA and the group of experts on AFO air emissions that developed the monitoring study protocol concluded that 2 years of monitoring were needed to conduct a study that will yield data adequate to allow EPA to develop reasonably accurate emissions-estimating methodologies. While much has to be done once the monitoring study is completed to develop the emissions-estimating methodologies, such as analysis of data and review by EPA's Science Advisory Board, EPA will not wait until the end of the 2-year monitoring study before beginning the process of developing the Emissions-Estimating Methodologies, but rather will do so as soon as data become available. Moreover, EPA has agreed to publish the emissions-estimating methodologies on a rolling basis as they are developed. For those reasons, EPA is hopeful that it will be able to publish emissions-estimating methodologies for large segments of the AFO industry before the 18-month deadline, and that any required controls will subsequently be installed before 2010.

EPA believes that the alternative to the Agreement suggested by several commenters—using enforcement authority to order AFO to measure their emissions and to comply with all applicable environmental requirements would take much longer. In addition to the above steps related to emissions monitoring and developing emissions-estimating methodologies for the AFO industry, which would take just as long if not longer under this scenario, there would also potentially be several years of litigation added to the timeline as AFO contested EPA's orders and emissions-estimating methodologies. By avoiding lengthy litigation, the Agreement provides the shortest timeframe possible to obtain the necessary data and to bring AFO into compliance with all applicable regulatory requirements pertaining to air emissions.

*Comment:* BACT/LAER.

Several commenters noted that it is not clear what types of control strategies/techniques respondents will be committing to install, since best available control technology (BACT)/lowest achievable emission limitations (LAER) determinations have not been made for agriculture sources. The commenters expressed concern that implementation of BACT/LAER could force closure of farms.

*Response:* The selection of both BACT and LAER are site-specific determinations that consider the achievability of controls. A BACT analysis requires the local permitting authority to consider the economic, energy, and environmental impacts in determining the degree of emissions reductions that are achievable for new or modified major sources in attainment areas. EPA does not envision significant burdens associated with the application of BACT. Although a LAER determination does not consider economic, energy, or environmental factors, a LAER limit also is not intended to impose costs that would prevent successful economic operation of a source. LAER is defined as the most stringent emission limitation that is either: (1) Contained in a State implementation plan, or (2) achieved in practice by a source in the same class or category. If a control technology is in use at another facility in the same class or category of farm, then this is evidence that the costs of that control are not prohibitive and would not cause a competitive disadvantage. EPA will be

issuing guidance in the future that will specify the conditions that constitute the same class or category of farm. Relative to non-attainment and attainment areas under the CAA, BACT is applicable when a major source applies for a PSD permit, and is only applicable in attainment areas. LAER is applicable when a major source applies for a New Source Review (NSR) permit in a non-attainment area. Until emission estimates are developed for farm operations, it is not known whether BACT or LAER would be required. If they are needed, EPA will work with the U.S. Department of Agriculture (USDA) to determine the most effective BACT and LAER alternatives for the least cost. EPA will issue guidance addressing this along with methodologies for determining emission estimates at the conclusion of the study.

*Comment:* Civil Penalty Payment.

EPA received several comments suggesting that the civil penalty provision and the monitoring fund fees under the Agreement are inappropriate for various reasons. Commenters noted that the Agreement does not follow the penalty assessment criteria established by CERCLA, EPCRA and the CAA. Commenters also claimed that the EPA failed to adhere to its policies governing the assessment of penalties, known as Enforcement Response Policies (ERPs), in administrative enforcement proceedings which provide guidance in establishing penalties.

Commenters argued that the penalties under the Agreement were either too low or too high. Those who thought that the penalties under the Agreement were too low referenced the criteria set forth in the statutes and in the ERPs. Those who thought that the penalties under the Agreement were too high commented that small farmers would have to pay a disproportionate amount of their total revenue where they are unlikely to trigger CERCLA, EPCRA or CAA reporting thresholds. Lastly, some commenters noted that the monitoring fund fees would impose a financial hardship.

EPA also received several comments suggesting that the Agreement requires an admission of liability and that the term ''civil penalty'' carries negative connotations that imply guilt. Furthermore, companies should not have to pay to resolve unproven violations.

*Response:* The Agreement is a voluntary settlement between the EPA and participating farmers. There is no obligation to participate. The penalty assessment criteria contained in CERCLA, EPCRA, and the CAA serve as guidance in establishing the penalty provision under the Agreement. The Agreement use a pro-rata determination based on the size of business in calculating the amount of the penalty. For example, the Agreement considers the number of facilities in making the penalty determination. Under the Agreement, some small farmers may pay as little as $200 in order to participate. The monitoring fund fees will be used to support monitoring activities to determine emissions from various types of operations across geographic regions and species. Given the lack of established emissions factors, participating facilities both large and small will benefit from increased certainty—both in knowing their obligations and resolving possible current and past liability.

By signing the Agreement, farmers are not admitting any liability or any sort of wrongdoing. The Agreement makes clear that signing is not an ''admission that any of its agricultural operations has been operated negligently or improperly or that any such operation is or was in violation of any Federal, State, or local law or regulation.'' The civil penalty provision is not intended to be used for any other purposes other than this Agreement. Rather, payment of a penalty is part of the process to obtain a release from liability for possible violations. If the participant pays the penalty and complies with all the terms of the Agreement, the Federal Government cannot sue later for the violations covered by the Agreement. Payment provides participants with the full protections of the settlement.

A primary focus of the national air emissions study is to determine how much air pollution farms emit. The type and quantity of emissions depend on many factors such as species, number of animals, type of operation, and location. Until the monitoring study is complete and more data are available, it would be difficult to say what requirements may apply to which particular size and type of operations, and whether these farms emit enough pollutants to trigger regulatory requirements. In fact, the study is designed to answer this question: what size and types of farms may have regulatory responsibilities? Therefore, the results of the study will be used to determine compliance status.

*Comment:* Payment Responsibility for Monitoring.

EPA received a number of comments relating to funding of the monitoring study. Some commenters noted that farms should not have to pay to monitor their facilities; EPA and/or USDA should pay for the monitoring or offer grants to help farms pay for the monitoring. Some commenters also noted possible inequities in the funding obligations across animal species because dairy and poultry cannot use check-off funds to pay for monitoring.

*Response:* Every source is obligated to determine if it is in compliance with applicable Federal environmental laws. EPA recognizes it may be difficult for certain farms to determine their compliance responsibilities with respect to air emissions. The emissions monitoring study in the Agreement will help provide the scientific data needed to help farmers and EPA determine the compliance status of AFO. The Agreement is the quickest and most effective way to address current uncertainty regarding emissions from AFO and to bring all AFO into compliance with all applicable regulatory requirements pertaining to air emissions.

EPA is offering the Agreement to AFO in the egg, broiler chicken, turkey, dairy and swine industries. The Agreement ensures that responsibility for funding the emissions monitoring study will be shared among the AFO that choose to sign the Agreement. Moreover, the Agreement should reduce the cost of measuring emissions for individual facilities by combining participants' resources.

The Agreement also ensures participating farms are treated fairly and consistently across animal sectors. Under the Agreement, EPA will not sue any participant for certain past violations; in return, participants agree to pay a small civil penalty and contribute to the emissions monitoring study. The Agreement is designed to provide flexibility for the industry to generate or pool resources to cover the costs of the study.

*Comment:* Immunity.

Several commenters stated EPA should not give ''immunity'' as part of the Agreement, or at least not to the farms that are not monitored as part of the emissions monitoring study.

*Response:* A release and covenant not to sue is a common provision of settlements and is consistent with the procedural requirements for the settlement of matters before filing an administrative complaint contained in 40 CFR part 22. In the Agreement, EPA agrees not to sue participating AFO for violations of certain federal environmental laws provided participants comply with specific conditions of the Agreement. This limited conditional release and covenant not to sue is offered to participating AFO that pay a small penalty and contribute to the monitoring study fund. Payment

provides participants with the full protections of a settlement.

*Comment:* Monitoring Protocol—Outside Peer Review/Stakeholder Involvement.

EPA received several comments suggesting that the monitoring protocol should be reviewed by groups outside the EPA, and that EPA should provide greater stakeholder participation. Commenters suggested that the monitoring protocol should undergo peer review by independent experts that were not involved in formulating the protocol. Also, some State and local agencies requested that they be allowed to participate with EPA in the periodic technical review of progress of the study.

*Response:* The monitoring protocol was developed over a period of approximately 12 months by a group of thirty experts in the area of AFO air emissions. This group of experts included scientists from both USDA and EPA, the AFO industry, environmental groups, and academia. EPA is evaluating whether and how to conduct additional review.

*Comment:* Monitoring Site Selection/Statistical Representation.

EPA received many comments related to the selection of monitoring sites. Commenters stated that the number of monitoring sites is too small to provide scientifically defensible emission estimates. Commenters also noted that the number of sites is too limited to account for all of the differences in types of manure management systems, building types, ventilation rates, feeding practices, animal type/age, animal management practices, geography, and climate. Even for the types of farms monitored, commenters said that there may not be a sufficient number of samples to establish a statistically-valid standard deviation to account for random variability from a single farm type.

*Response:* EPA recognizes that there is a wide variety of AFO processes used in the industry and that the mechanisms that generate emissions from the AFO industry are highly complex. EPA recognizes that it is impractical to expect that sufficient data could be collected in a timely manner to accurately characterize every different type of operation and practice used in the AFO industry. Technical experts on emission monitoring at EPA and a number of universities have concluded that monitoring the farms described in the protocol will provide sufficient data to get a valid sample that is representative of the vast majority of participating AFO. At the time the agreement was announced, EPA estimated that approximately 28 farms would be selected to represent the major animal groups (*e.g.*, swine, dairy, and poultry), different types of operations, and different geographic regions. Twenty-eight farms represent EPA's estimate of the minimum number of farms that are expected to participate in the Agreement, based on the resources available. If more farms decide to participate, then resources will be available to monitor additional sites. Whatever number of sites are ultimately selected, EPA will choose farms that are representative of the broadest population of participating animal feeding operations. Moreover, in developing the methodologies for estimating AFO emissions, EPA will not be limited to using only the data collected under the Agreement. As stated in the **Federal Register** notice, EPA intends to aggregate the data collected under the Agreement with existing emissions data. Currently, substantial research on AFO emissions is being conducted by states, universities, and the USDA. For example, the USDA funded a project through the Initiative for Future Agriculture and Food Systems in early 2000. This emissions measurement project at livestock and poultry buildings is being conducted in six States: Indiana, Iowa, Illinois, Minnesota, North Carolina, and Texas. Mobile laboratories are being used by each State to collect aerial pollutant emissions from the barns of six different animal types, one type per each participating State. EPA will evaluate the results of the research and all other relevant studies and will incorporate the findings of any substantially similar studies that can meet quality assurance tests and other validity tests into the emissions-estimating methodologies.

*Comment:* Use of a Single Nonprofit Organization/Independent Monitoring Contractor.

Some commenters asserted that using a single nonprofit organization (NPO) and single independent monitoring contractor (IMC) to conduct the monitoring is inappropriate. Commenters stated that a separate NPO should be established for each animal sector to ensure the credibility and success of the monitoring results. In this manner, the monitoring study would be conducted by individuals who are most knowledgeable about each animal sector. A primary concern of the commenters was that the emission results will not be valid because the monitoring study will not be tailored to the needs of each animal species and study location.

*Response:* The Agreement provides for individuals who are most knowledgeable to be responsible for planning and implementing the study. The use of a single NPO and IMC does not limit the scientific expertise that will be incorporated into planning and implementation. The NPO will be primarily responsible for administration of the study and communicating progress, but will not be involved in the technical aspects of the testing and monitoring program. The IMC and Science Advisor will be responsible for developing the monitoring plan; ensuring the consistency of the quality assurance objectives, test methods, and monitoring protocols that will be used at the various sites; and selection, hiring, and oversight of the Principal Investigators for each site, who will be responsible for conducting the monitoring at each site. The Principal Investigators will be selected based on the unique scientific expertise required for each animal species and farm operating practice.

The Principal Investigators will be regional or local experts (*e.g.*, nearby university researchers) who are familiar with local animal agricultural practices and the topographic and meteorological factors that influence emissions. Under the direction and approval of the Science Advisor, the Principal Investigators may participate in site selection and development of the site-specific monitoring plans and will be able to alter their plans due to interim findings as the study progresses. Hence, the study methodology is anticipated to allow sector experts to oversee the implementation of the plans and tailor the monitoring protocols as needed to address site-specific conditions.

*Comment:* Testing and Monitoring Methods and Data Availability.

EPA received a number of technical comments related to testing and monitoring methodologies. These comments addressed limitations and difficulties of applying specific sampling methods to barns and manure storage facilities (*e.g.*, maintenance and operating procedures, the citing of samplers, sampling procedures, sampling frequency, method selection, and others).

Several commenters stated that real-time monitoring data should be made available online to the public. Other commenters said that the industry participants and independent researchers that conduct the monitoring should have access to the data and be encouraged to publish the data.

*Response:* The comments EPA received on testing and monitoring-related issues came primarily from

researchers with experience in evaluating and monitoring emissions from the processes and animal groups addressed by the Agreement. These comments contain useful advice on the application of testing and monitoring methods, sampling locations, equipment selection, and maintenance as well as suggestions for avoiding potential pitfalls. These comments will be passed to the Science Advisor for consideration in developing site-specific testing and monitoring plans. As stated in the Agreement, all the emissions data collected will be made available to the public. Throughout the course of the study, the IMC will submit quarterly progress reports to EPA and provide all emissions data and analysis to the EPA as soon as possible. The EPA will review the data to validate the suitability for use in developing emission estimation tools. As the study progresses, EPA will periodically release interim findings to the public. At this time, the schedule for release and the format of the data have not been determined.

*Comment:* Industry-Sponsored Study.

A number of commenters stated that industry should not be responsible for the monitoring study because the results of the study could not be accepted as unbiased, especially since there is no outside oversight of the monitoring by EPA or anyone else not connected with the industry.

*Response:* Throughout the study, the activities of the Principal Investigators will be subject to review and approval by EPA. The IMC must submit to EPA a proposed monitoring plan (including selection of the farms to be tested) for review and approval. The Agreement also requires the IMC to submit quarterly progress reports to EPA and schedule periodic meetings with EPA (additional meetings can be scheduled at the request of EPA). The IMC must notify EPA promptly of any problems or adjustments made to the approved plan. The EPA also will have access to the farms participating in the study to verify or observe the conduct of the monitoring. All emissions data generated and all analyses of the data made by the IMC during the monitoring study will be provided to EPA as soon as possible. EPA will review and analyze the data to verify credibility for use in developing the emissions-estimation methodologies. The emissions data also will be made available to the public.

Since the inception of the CAA, most emissions data that have been used for regulatory applicability determinations and environmental rulemaking have been developed by industry. EPA policy requires that the data be collected using federally approved test methods. EPA reviews the final test reports and is the final authority on the acceptability of the data. The monitoring protocol for AFO differs only in the scope of the monitoring study and the additional degree of EPA involvement in the up-front planning of the study.

*Comment:* Process-Based Models.

Several commenters stated that the emissions-estimating methodologies developed by EPA should be process-based models as suggested by the National Academy of Sciences. In addition, development of the emissions-estimating methodologies should be an open process, with citizen and State involvement and peer review.

*Response:* In the short-term, the monitoring study is designed to produce scientifically sound emissions-estimating methodologies for making regulatory applicability decisions for AFO. Our longer-term strategy involves development of process-based models that consider the entire animal production process, consistent with the recommendations from the National Academy of Sciences. The data collected in the monitoring study, along with other valid scientific studies that are available will be used to develop the process-based models. EPA has not determined the process by which emissions-estimating methodologies will be developed. EPA anticipates that the process will provide the opportunity for public input and review. However, the timing and extent of review have not been determined.

*Comment:* Claim that Agreement is a Rule.

Several commenters expressed the opinion that the Agreement was a rule, not an adjudication, and was, therefore, subject to the Administrative Procedure Act's procedures for rulemaking. Commenters expressed two concerns. First was a belief that the Agreement will excuse a large part of the industry from compliance with the CAA, CERCLA, and EPCRA for several years. Second, commenters expressed concern that binding emission evaluating protocols would be established without adequate public input.

*Response:* Each Agreement that will be entered into by EPA is a settlement of potential civil violations under the Clean Air Act, CERCLA, and EPCRA and, therefore, clearly the result of an adjudication. It contains all the classic elements of an adjudicatory settlement, including an allegation of potential violations, a civil penalty, a resolution of liability, and a requirement that the participating farms come into compliance with all applicable regulatory requirements. While the commenters object that the Agreement does not require immediate compliance, it is common for settlements to establish a compliance schedule. Here, the Agreement requires that the participating company must first determine the amount of their emissions and which regulatory requirements apply, and then is required come into compliance expeditiously once that determination is made. The fact that EPA has chosen to exercise its enforcement discretion to enter into essentially the same settlement agreement with a class of facilities that may have the same potential violations does not convert the adjudicatory process into a rulemaking one.

With regard to commenters' second concern, EPA has not determined the process by which emissions-estimating methodologies will be developed and anticipates that the process will provide the opportunity for public input and review. Because neither the final form of the emissions-estimating methodologies nor the process by which they will be developed has yet been determined, commenters' claim that EPA has failed to comply with procedural requirements is premature.

*Comment:* Liability Impacts in Other Areas.

EPA received a number of comments on potential adverse consequences of ''admitting liability'' by participation in the Agreement, with payment of a penalty pursuant to Paragraph 48 of the Final Order. Some farmers raised concerns that participation could affect their credit, immigration status, and ability to participate in other government programs.

*Response:* As noted earlier, participation in the Agreement is not an admission of liability. Paragraph 3 of the Agreement makes clear that execution of the Agreement is ''not an admission that any of its agricultural operations has been operated negligently or improperly, or that any such operation is or was in violation of any Federal, State, or local law or regulation.'' Consistent with EPA's practice in settling both civil judicial and administrative matters, the Agreement states that, ''participation in this Agreement is not an admission of liability.'' Concerns that signing the Agreement may serve as an admission are addressed in the Agreement. No further clarification is necessary. Second, as set out in Paragraph 2 of the Agreement, the purpose of the Agreement is to ensure that participants comply with applicable requirements of the CAA and applicable reporting provisions of CERCLA and EPCRA.

Participation should not give rise to any inference of wrongdoing. To the contrary, EPA deems those who choose to participate to be cooperatively addressing an industry-wide problem, acting responsibly and proactively.

Further, until the results of the study are published and EPA determines emissions factors, it can be difficult for participants to determine their compliance status. The Agreement provides a mechanism for resolution of civil liability, as set out in the Agreement, that is designed to achieve compliance for large segments of the industry as rapidly as possible. For all of these reasons, participants should not suffer adverse consequences in any other public or private application, program, or proceeding for voluntarily undertaking this action.

**Conclusion**

Interested parties should refer to the January 31, 2005, **Federal Register** notice (70 FR 4958) to view the consent agreement and final order at Appendix 1, Attachment A—Farm Information Sheet, and Attachment B—National Air Emissions Monitoring Study Protocol.

Dated: June 30, 2005.

**Sally L. Shaver,**

*Director, Emission Standards Division, Office of Air Quality Planning and Standards.*

Dated: July 5, 2005.

**Robert A. Kaplan,**

*Director, Special Litigation and Projects Division, Office of Civil Enforcement and Compliance Assurance.*

[FR Doc. 05–13672 Filed 7–11–05; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7936–6]**

## Announcement of the Board of Trustees for the National Environmental Education and Training Foundation, Inc.

**SUMMARY:** The National Environmental Education and Training Foundation was created by Section 10 of Public Law #101–619, the National Environmental Education Act of 1990. It is a private 501(c)(3) non-profit organization established to promote and support education and training as necessary tools to further environmental protection and sustainable, environmentally sound development. It provides the common ground upon which leaders from business and industry, all levels of government, public interest groups, and others can work cooperatively to expand the reach of environmental education and training programs beyond the traditional classroom. The Foundation supports a grant program that promotes innovative environmental education and training programs; it also develops partnerships with government and other organizations to administer projects that promote the development of an environmentally literal public.

The Administrator of the U.S. Environmental Protection Agency, as required by the terms of the Act, announces the following appointment to the National Environmental Education and Training Foundation, Inc. Board of Trustees. The appointee is J.L. Armstrong, National Manager, Diversity, Development—Community, Toyota Sales, USA, Inc. The appointee will join the current Board members which include:

- Braden Allenby, Vice President, Environment, Health and Safety, AT&T
- Richard Bartlett, (NEETF Chairman) Vice Chairman, Mary Kay Holding Corporation
- Dorothy Jacobson, Consultant
- Karen Bates Kress, President, KBK Consulting, Inc.
- Dorothy McSweeny, (NEETF Vice Chair), Chair, DC Commission on the Arts and Humanities
- Honorable William Sessions, former Director of the Federal Bureau of Investigation.

*Additional Considerations:* Great care has been taken to assure that this new appointee not only has the highest degree of expertise and commitment, but also brings to the Board diverse points of view relating to environmental education and training. This appointment shall be for two consecutive four year terms.

**FOR FURTHER INFORMATION CONTACT:** C. Michael Baker, (202) 564–0446, Acting Director, Office of Environmental Education, Office of Public Affairs (1704A) U.S. EPA 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Dated: July 6, 2005.

**Stephen L. Johnson,**

*Administrator.*

**BIO of New Member**

**J. L. Armstrong, National Manager, Diversity Development—Community, Toyota Motor Sales, U.S.A., Inc.**

J.L. Armstrong is national manager diversity development, community for Toyota Motor Sales (TMS), U.S.A., Inc.

In support of Toyota's 21st Century Diversity Strategy, he has corporate liaison responsibility for minority advertising and marketing promotions, supplier diversity, community relations, and field operations. He is charged with developing a strategic diversity plan and is responsible for monitoring, augmenting, tracking, and supporting those processes that result in the organization's ability to sustain a competitive advantage by leveraging diversity.

Armstrong began his career with Toyota in 1992 as merchandising manager and was responsible for developing and implementing marketing programs targeting special markets based upon ethnicity, gender, and educational background. Armstrong developed and implemented sports, motorsports, media merchandising, auto show, and promotional clothing/specialty merchandising marketing programs.

In 1998 he was appointed supplier development manager and promoted to national manager supplier development January 2002. Armstrong developed the Supplier Development Department at TMS, which included developing an electronic supplier database accessible to all TMS associates in the interest of increasing the utilization of minority and woman-owned businesses. He developed a Second Tier Supplier Program to ensure that TMS majority-owned suppliers utilize minority and woman-owned businesses, and developed metrics and quarterly reporting systems to ensure that TMS is able to monitor its spending with minority and woman-owned business enterprises. Armstrong was instrumental in taking TMS from $44 million in minority/woman-owned business procurement spend in 1998 to over $83 million in 2001.

Prior to Toyota, Armstrong worked as director of business affairs for Universal Television, MCA, Inc., negotiating deals for the services of writers, directors, and producers in connection with television development and production.

Armstrong graduated with a Bachelor of Science degree in business from Indiana University in Bloomington, Ind. He is an ordained minister with the African Methodist Episcopal Church, and serves on the ministerial staff of Rev. Dr. Cecil Murray at First AME Church, Los Angeles, Calif.

Armstrong is past Vice Chair External Affairs of the Southern California Regional Purchasing Council board of directors, and served on the senior corporate executive advisory board of the United States Hispanic Chamber of Commerce in Washington, DC.

Armstrong resides in West Los Angeles, Calif.

[FR Doc. 05–13697 Filed 7–11–05; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7937–7]**

### Notice of Public Meeting and Conference Calls: Meeting of the National Drinking Water Advisory Council's Subgroup on Drinking Water Program Performance Indicators and Measures

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** Under Section 10(a)(2) of Public Law 92–423, The Federal Advisory Committee Act, notice is hereby given for a meeting of a subgroup of the National Drinking Water Advisory Council (NDWAC or Council). This Council was authorized by the Safe Drinking Water Act in 1974 (42 U.S.C. 300f *et seq.*) to support the Environmental Protection Agency in performing its responsibilities related to the national drinking water program. In June 2005, the Council established a subgroup to develop recommendations for EPA to move drinking water program measures from outputs to outcomes in three steps. Step 1 will be to recommend changes to the current performance measures that move them toward outcomes. Step 2 will be to recommend new performance measures that can capture some public health outcomes and be included in EPA's next strategic plan. Step 3 will be to identify future performance measures that need additional development. The subgroup will report to the NDWAC by mid-September 2005.

**DATES:** The face-to-face meeting of the subgroup will be held on Thursday, July 21, 2005, from 8:30 to 5 p.m., and Friday, July 22, 2005, 8:30 a.m. to noon, eastern daylight time.

**ADDRESSES:** The meeting will be held at the Doubletree Hotel Washington (formerly the Washington Terrace Hotel), 1515 Rhode Island Avenue, NW., Washington, DC 20005. In addition to this meeting, conference calls have been scheduled for August 11, August 30, and September 14, 2005; however, specific times for these calls have not yet been determined.

**FOR FURTHER INFORMATION CONTACT:** Members of the public who would like to attend the meeting, present an oral statement, or submit a written statement, should contact Clare Donaher by phone at (202) 564–3787, by e-mail at *donaher.clare@epa.gov,* or by regular mail at the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (MC 4601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The public may also participate on the conference calls and times as they are scheduled will be provided to those who contact Clare Donaher.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Any person needing special accommodations at this meeting, including wheelchair access, should contact Clare Donaher (*see* **FOR FURTHER INFORMATION CONTACT** section). Notification of at least five (5) business days before the meeting is preferred so that appropriate special accommodations can be made.

Dated: July 5, 2005.

**Cynthia C. Dougherty,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. 05–13694 Filed 7–11–05; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EDOCKET ID No.: ORD–2005–0020; FRL–7937–4]**

### Board of Scientific Counselors, Executive Committee Telecon Meeting—Summer 2005—New Date

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice to change meeting date.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice that the date of a public meeting (via conference call) of the Executive Committee of the Board of Scientific Counselors (BOSC) has changed. The meeting was originally scheduled for July 13, 2005, and notice of this meeting was announced in the **Federal Register** on Thursday, June 30, 2005, 70 FR 125, pages 37839–37841. This meeting has been rescheduled to July 29, 2005. The purpose of the meeting remains the same: to review a draft report of the BOSC Particulate Matter/Ozone Research Subcommittee.

**DATES:** The meeting (via conference call) will be held on Friday, July 29, 2005 from 1 p.m. to 3 p.m., eastern time, and may adjourn early if all business is finished. Written comments, and requests for the draft agenda or for making oral presentations during the call will be accepted up to 1 business day before the meeting date.

**ADDRESSES:** Participation in the meeting will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Lorelei Kowalski, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lorelei Kowalski, Designated Federal Officer, via telephone/voice mail at (202) 564–3408, via e-mail at *kowalski.lorelei@epa.gov,* or by mail at Environmental Protection Agency, Office of Research and Development, Mail Code 8104–R, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Dated: July 6, 2005.

**Kevin Y. Teichman,**

*Director, Office of Science Policy.*

[FR Doc. 05–13698 Filed 7–11–05; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2005–0191; FRL–7723–6]**

### Request for Public Comment on Proposed Settlement Agreement Involving Pesticides and the Endangered Species Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability; request for public comments

**SUMMARY:** EPA is making available for comment a proposed Settlement Agreement that would establish a series of deadlines for the Agency to make ''effects determinations'' on pesticides containing any of six active ingredients to determine their potential effects on the Barton Springs Salamander, *Eurycea sosorum*, or its designated critical habitat. If the Agency determines a pesticide ''may affect and is likely to adversely affect'' the listed species, the Agency will initiate formal consultation with the U.S. Fish and Wildlife Service (FWS). EPA will evaluate all comments received during the public comment period to determine whether all or part of the proposed Settlement Agreement warrants reconsideration. This proposed Settlement Agreement, if entered by the Court, would resolve a lawsuit brought against EPA by the Center for Biological Diversity and the Save Our Springs Alliance (jointly, plaintiffs).

**DATES:** Comments must be received on or before July 27, 2005.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number OPP–2005–0191, by one of the following methods:

- *Agency Website:http://www.epa.gov/edocket/*. EDOCKET,

EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

• *E-mail*: Comments may be sent by e-mail to*opp-docket@epa.gov*, Attention: Docket ID NumberOPP–2005–0191.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0191.

• *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0191. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions*: Direct your comments to docket ID number OPP–2005–0191. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET or e-mail. EDOCKET is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line.

*Docket:* All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Arty Williams, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5239; fax number: (703) 308–3259; e-mail address: *williams.arty@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of particular interest to the Center for Biological Diversity, Save Our Springs Alliance, other environmental or public interest groups, Texas state regulatory partners, other interested Federal agencies, pesticide registrants, and pesticide users. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Copies of this Document and Other Related Information?*

*Electronic access*. In addition to using EDOCKET(*http://www.epa.gov/edocket/*) you may access this**Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at*http://www.epa.gov/fedrgstr/*.

The proposed Settlement Agreement and other relevant documents are available electronically through EPA's electronic public docket and comment system, EDOCKET. Go to *http://www.epa.gov/edocket/* to submit or view public comments, to access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number OPP–2005–0191. The proposed Settlement Agreement and other relevant documents may also be accessed on EPA's website, *www.epa.gov/pesticides*, both under the heading ''What's New?'' and ''Open Comment Periods.''

### *C. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI*. Do not submit CBI information to EPA. Should EPA determine as a result of any comments received during the 15–day public comment period that all or part of the proposed Settlement Agreement merits reconsideration, EPA will provide the plaintiffs with a written request for further negotiations and a copy of all comments related to EPA's basis for such negotiations. Therefore, EPA will construe the submission of a comment as a waiver of any confidential business claim as to that comment.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing section numbers.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background

On January 26, 2004, plaintiffs filed a lawsuit in federal district court for the District of Columbia alleging that EPA failed to comply with sections 7(a)(1) and 7(a)(2) of the Endangered Species Act (ESA), 16 U.S.C. 1536(a)(1)–(2). *CBD v. EPA*, Case No. 1:04-cv-00126-CKK

(District Court for the District of Columbia).

EPA has reached an agreement with the plaintiffs. The agreement is embodied in a proposed Settlement Agreement. The proposed Settlement Agreement sets a series of deadlines for the Agency to make ''effects determinations'' on the potential for pesticides containing any of six active ingredients--atrazine, diazinon, carbaryl, prometon, metolachlor, and simazine--to affect the Barton Springs Salamander, *Eurycea sosorum,* or its designated critical habitat. An ''effects determination'' considers whether use of a pesticide: (1) Has no effect on a listed species; (2) may affect but is not likely to adversely affect a listed species; or (3) may affect and is likely to adversely affect a listed species. If the Agency determines a pesticide ''may affect and is likely to adversely affect'' the Barton Springs Salamander or designated critical habitat, EPA will initiate formal consultation with the U.S. Fish and Wildlife Service (FWS) as described in the Settlement Agreement.

In addition, during the pendency of the schedule for effects determinations outlined in the Settlement Agreement, the plaintiffs agree not to seek any injunction or other use restriction for any of the pesticides subject to the Settlement Agreement. Pursuant to the Settlement Agreement, in the event EPA makes a ''may affect and is likely to adversely affect'' determination for any of the pesticides, the plaintiffs reserve the right to seek use restrictions for that pesticide by filing a new complaint with the Court.

Beginning today, EPA is opening a 15–day comment period on the proposed Settlement Agreement. EPA will use the comments to determine whether all or part of the proposed Settlement Agreement warrants reconsideration.

If EPA determines that any part of the proposed Settlement Agreement merits reconsideration, EPA will provide the plaintiffs with a written request for further negotiations and the proposed Settlement Agreement shall not be entered with the Court unless the parties can reach agreement on needed changes.

If EPA determines that the proposed Settlement Agreement does not need to be reconsidered, the terms of the proposed Settlement Agreement shall become effective upon entry by the U.S. District Court for the District of Columbia. Once the Settlement Agreement is entered by the U.S. District Court for the District of Columbia, EPA will post on its web site at*www.epa.gov/pesticides* a notice indicating the Settlement Agreement has been so entered.

**List of Subjects**

Environmental protection, Endangered species.

Dated: July 7, 2005.

**Susan B. Hazen,**

*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. 05–13768 Filed 7–11–05; 8:45 am]

**BILLING CODE 6560–50–S**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:**

*Background*

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Request for Comment on Information Collection Proposals*

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments must be submitted on or before September 12, 2005.

**ADDRESSES:** You may submit comments, identified by FR K–2, FR Y–1F, FR Y–9C, by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- FAX: (202) 452–3819 or (202) 452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Federal Reserve Board Clearance Officer (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal

Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

*Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report*

*Report title:* Notifications Related to Community Development and Public Welfare Investments of State Member Banks.

*Agency form number:* FR H–6.

*OMB control number:* 7100–0278.

*Frequency:* Event-generated.

*Reporters:* State Member Banks.

*Annual reporting hours:* 125.

*Estimated average hours per response:* Investment notice, 2 hours; Application (Prior Approval) 5 hours; and Extension of divestiture period, 5 hours.

*Number of respondents:* Investment notice, 10; Application (Prior Approval) 20; and Extension of divestiture period, 1.

*General description of report:* This information collection is required to obtain a benefit (12 U.S.C. 338a, and 12 CFR 208.22). Individual respondent data generally are not regarded as confidential, but information that is proprietary or concerns examination ratings would be considered confidential.

*Abstract:* Regulation H requires state member banks that want to make community development or public welfare investments to comply with the Regulation H notification requirements: (1) If the investment does not require prior Board approval, a written notice must be sent to the appropriate Federal Reserve Bank; (2) if certain criteria are not met, a request for approval must be sent to the appropriate Federal Reserve Bank; and, (3) if the Board orders divestiture but the bank cannot divest within the established time limit, a request or requests for extension of the divestiture period must be submitted to the appropriate Federal Reserve Bank.

*Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Reports*

1. *Report title:* Application for a Foreign Organization To Become a Bank Holding Company.

*Agency form number:* FR Y–1F.

*OMB control number:* 7100–0119.

*Frequency:* On occasion.

*Reporters:* any company organized under the laws of a foreign country seeking to acquire a U.S. subsidiary bank or bank holding company.

*Annual reporting hours:* 710.

*Estimated average hours per response:* 70–90 hours.

*Number of respondents:* 9.

*General description of report:* This information collection is required to obtain or retain a benefit under sections 3(a), 3(c), and 5(a) through 5(c) of the Bank Holding Company Act (12 U.S.C. 1842(a) and (c) and 1844(a) through (c) and is not given confidential treatment unless the applicant specifically requests confidentiality and the Federal Reserve approves the request.

*Abstract:* Under the Bank Holding Company Act (BHCA), submission of this application is required for any company organized under the laws of a foreign country seeking to acquire a U.S. subsidiary bank or bank holding company. Applicants must provide financial and managerial information, discuss the competitive effects of the proposed transaction, and discuss how the proposed transaction would enhance the convenience and needs of the community to be served. The Federal Reserve uses the information, in part, to fulfill its supervisory responsibilities with respect to foreign banking organizations in the United States.

*Current Actions:* Foreign organizations seeking initial entry are currently required to file the FR Y–1F. However, the filing requirements are ambiguous for foreign organizations that are already subject to the BHCA and seek to acquire a U.S. bank or bank holding company. In order to clarify and streamline the application process for foreign organizations, the Federal Reserve proposes to explicitly state that these organizations should file the FR Y–1F. Thus, the FR Y–1F would be retitled, renumbered, and modified to achieve consistency with the FR Y–3, the Application for Prior Approval to Become a Bank Holding Company or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company (OMB No. 7100–0121), the form used by domestic holding companies. Also, the Federal Reserve proposes technical clarifications to the instructions that would remove page number references to the Interagency Biographical or Financial Report (FR 2081c; OMB No. 7100–0134) and insert a sentence into the standard commitment language in order to make the commitments more enforceable.

2. *Report title:* International Applications and Prior Notifications Under Subpart B of Regulation K.

*Agency form number:* FR K–2.

*OMB control number:* 7100–0284.

*Frequency:* On occasion.

*Reporters:* Foreign banks.

*Annual reporting hours:* 420.

*Estimated average hours per response:* 35.

*Number of respondents:* 12.

*General description of report:* This information collection is required to obtain or retain a benefit under sections 7 and 10 of the International Banking Act (12 U.S.C. 3105 and 3107) and Regulation K (12 CFR 211.24(a) and is not given confidential treatment unless the applicant specifically requests confidentiality and the Federal Reserve approves the request.

*Abstract:* Foreign banks are required to obtain the prior approval of the Federal Reserve to establish a branch, agency, or representative office; to acquire ownership or control of a commercial lending company in the United States; or to change the status of any existing office in the United States. The Federal Reserve uses the information, in part, to fulfill its statutory obligation to supervise foreign banking organizations with offices in the United States.

*Current Actions:* The Federal Reserve proposes technical clarifications to the instructions that would remove page number references to the Interagency Biographical or Financial Report (FR 2081c; OMB No. 7100–0134), correct language pertaining to representative offices, and insert a sentence into the standard commitment language in order to make the commitments more enforceable.

*Proposal To Approve Under OMB Delegated Authority the Revision of the Following Report*

*Report title:* Financial Statements for Bank Holding Companies.

*Agency form number:* FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9CS, and FR Y–9ES.

*OMB control number:* 7100–0128.

*Frequency:* Quarterly, semiannually, and annually.

*Reporters:* BHCs.

*Annual reporting hours:* 400,536.

*Estimated average hours per response:* FR Y–9C: 35.55 hours; FR Y–9LP: 4.75 hours; FR Y–9SP: 4.85 hours; FR Y–9ES: 30 minutes; FR Y–9CS: 30 minutes.

*Number of respondents:* FR Y–9C: 2,240; FR Y–9LP: 2,590; FR Y–9SP: 3,253; FR Y–9ES: 87; FR Y–9CS: 600.

*General description of report:* This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6)

and (b)(8) of the Freedom of Information Act (5 U.S.C. 522(b)(4), (b)(6) and (b)(8)).

*Abstract:* The FR Y–9C collects basic financial data from a domestic BHC on a consolidated basis in the form of a balance sheet, an income statement, and detailed supporting schedules, including a schedule of off-balance-sheet items, similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100–0036). The FR Y–9C collects data from the BHC as of the end of March, June, September, and December. The FR Y–9C is filed by top-tier BHCs with total consolidated assets of $150 million or more and lower-tier BHCs that have total consolidated assets of $1 billion or more. In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR Y–9C.

The FR Y–9LP collects basic financial data from domestic BHCs on an unconsolidated, parent-only basis in the form of a balance sheet, an income statement, and supporting schedules relating to investments, cash flow, and certain memoranda items. This report is filed as of the end of March, June, September, and December on a parent company only basis by each BHC that files the FR Y–9C. In addition, for tiered BHCs, a separate FR Y–9LP must be filed for each lower-tier BHC.

The FR Y–9SP is a parent company only financial statement filed by smaller BHCs as of the end of June and December. Respondents include one-bank holding companies with total consolidated assets of less than $150 million and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This form is a simplified or abbreviated version of the more extensive parent company only financial statement for large BHCs (FR Y–9LP). This report collects basic balance sheet and income information for the parent company, information on intangible assets, and information on intercompany transactions.

The FR Y–9CS is a free form supplement that may be utilized to collect any additional information deemed to be critical and needed in an expedited manner. It is intended to supplement the FR Y–9C and FR Y–9SP reports.

The FR Y–9ES collects financial information from employee stock ownership plans (ESOPs) that are also BHCs on their benefit plan activities as of December 31. It consists of four schedules: Statement of Changes in Net Assets Available for Benefits, Statement of Net Assets Available for Benefits, Memoranda, and Notes to the Financial Statements.

*Current Actions:* The Federal Reserve proposes to revise the FR Y–9C to collect information on purchased impaired loans in response to Statement of Position 03–3, Accounting for Certain Loans or Debt Securities Acquired in a Transfer (SOP 03–3) issued by the American Institute of Certified Public Accountants (AICPA), and to collect information related to the Government National Mortgage Association (GNMA) mortgage loan optional repurchase program (rebooked loans backing GNMA securities).

**Proposed Revisions to the FR Y–9C**

The Federal Reserve proposes to revise the FR Y–9C to collect information on purchased impaired loans and rebooked loans backing GNMA securities. Revisions to the FR Y–9 family of reports are typically made once per year effective with the March 31st reporting date, however, in light of the change in generally accepted accounting principles (GAAP), [1] as it relates to reporting for purchased impaired loans and important supervisory considerations, the Federal Reserve proposes to revise the FR Y–9C report effective with the September 2005 report date. The proposed revisions would be consistent with the proposed changes to the FFIEC 031 Call Report, effective for the June 2005 report date. In addition to modifying instructions to incorporate the proposed reporting changes, instructions may be revised and clarified in an attempt to achieve greater consistency in reporting by respondents.

**Purchased Impaired Loans**

SOP 03–3 applies to ''purchased impaired loans,'' *i.e.*, loans that an institution has purchased, including those acquired in a purchase business combination, when there is evidence of deterioration of credit quality since the origination of the loan and it is probable, at the purchase date, that the institution will be unable to collect all contractually required payments receivable. SOP 03–3 does not apply to the loans that an institution has originated, and also excludes certain acquired loans from its scope.

Under SOP 03–3, a purchased impaired loan is initially recorded at its purchase price (in a purchase business combination, the present value of amounts to be received). The Statement of Position limits the yield that may be accreted on the loan (the accretable yield) to the excess of the institution's estimate of the undiscounted principal, interest, and other cash flows expected at acquisition to be collected on the loan over the institution's initial investment in the loan. The excess of contractually required cash flows over the cash flows expected to be collected on the loan, which is referred to as the nonaccretable difference, must not be recognized as an adjustment of yield, loss accrual, or valuation allowance. Neither the accretable yield nor the nonaccretable difference may be shown on the balance sheet. After acquisition, increases in the cash flows expected to be collected generally should be recognized prospectively as an adjustment of the loan's yield over its remaining life. Decreases in cash flows expected to be collected should be recognized as impairment.

The Statement of Position prohibits an institution from ''carrying over'' or creating valuation allowances (loan loss allowances) in the initial accounting for purchased impaired loans. This prohibition applies to the purchase of an individual impaired loan, a pool or group of impaired loans, and impaired loans acquired in a purchase business combination. As a consequence, SOP 03–3 provides that valuation allowances should reflect only those losses incurred after acquisition, that is, the present value of all cash flows expected at acquisition that ultimately are not to be received. Thus, because of the accounting model set forth in SOP 03–3, institutions will need to segregate their purchased impaired loans, if any, from the remainder of their loan portfolio for purposes of determining their overall allowance for loan and lease losses.

According to the Basis for Conclusions of SOP 03–3, the AICPA's Accounting Standards Executive Committee ''believes that the accounting for acquired loans within the scope of this SOP is sufficiently different from the accounting for originated loans, particularly with respect to provisions for impairment * * *, such that the amount of loans accounted for in accordance with this SOP should be disclosed separately in the notes to financial statements.'' The Federal Reserve agrees with this assessment and consistent with the disclosures required by SOP 03–3, proposes to add three items to the FR Y–9C to provide a better understanding of the relationship between the allowances for loan and lease losses and the carrying amount of the loan portfolios of those institutions

[1] For this purpose the AICPA Statement of Position is GAAP.

whose portfolios include purchased impaired loans. All three of these items represent information included in the disclosures required by SOP 03–3. The Federal Reserve believes that not identifying the reporting effect of SOP 03–3 on these data may cause significant confusion regarding the historical credit quality of an organization's loan portfolio.

The Federal Reserve proposes to add two memorandum items to Schedule HC–C, ''Loans and Leases,'' and one memoranda item to Schedule HI–B, Part II, ''Changes in Allowance for Loan and Lease Losses,'' to collect information on purchased impaired loans held for investment accounted for in accordance with AICPA SOP 03–3. New Schedule HC–C memorandum item 5(a) would collect the outstanding balance [2] and new memorandum item 5(b) would collect the carrying amount [3] as of the report date of the purchased impaired loans held for investment [4] that are included in Schedule HC–C. New Schedule HI–B, Part II, memorandum item 4 would collect the amount of loan loss allowances for purchased impaired loans held for investment that is included in the total amount of the allowance for loan and lease losses as of the report date.

The Federal Reserve also proposes to revise the instructions to Schedule HC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, to explain how purchased impaired loans should be reported in this schedule. SOP 03–3 does not prohibit placing loans on nonaccrual status and any nonaccrual purchased impaired loans should be reported accordingly in Schedule HC–N. For those purchased impaired loans that are not on nonaccrual status, institutions should determine their delinquency status in accordance with the contractual repayment terms of the loans without regard to the purchase price of (initial investment in) these loans or the amount and timing of the cash flows expected at acquisition.

**Rebooked Loans Backing GNMA Securities**

Government National Mortgage Association (GNMA) mortgage-backed securities are backed by residential mortgage loans that are insured or guaranteed by the Federal Housing Administration (FHA), the Veterans Administration (VA), or the Farmers Home Administration (FmHA). GNMA programs allow financial institutions to buy back individual delinquent mortgage loans that meet certain criteria from the securitized loan pool for which the institution provides servicing. At the servicer's option and without GNMA's prior authorization, the servicer may repurchase such a delinquent loan for an amount equal to 100 percent of the remaining principal balance of the loan. Under FASB Statement No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities, this buy-back option is considered a conditional option until the delinquency criteria are met, at which time the option becomes unconditional.

When the loans backing a GNMA security are initially securitized, Statement No. 140 permits the issuer of the security to treat the transaction as a sale for accounting purposes because the conditional nature of the buy-back option means that the issuer does not maintain effective control over the loans. The loans are removed from the issuer's balance sheet. When individual loans later meet GNMA's specified delinquency criteria and are eligible for repurchase, the issuer (provided the issuer is also the servicer) is deemed to have regained effective control over these loans and, under Statement No. 140, the loans can no longer be reported as sold. The delinquent GNMA loans must be brought back onto the issuer-servicer's books as assets and initially recorded at fair value, regardless of whether the issuer intends to exercise the buy-back option.

The Federal Reserve proposes that all delinquent rebooked GNMA loans should be treated the same as any other delinquent loans carried on the balance sheet and reported as past due on Schedule HC–N, ''Past Due and Nonaccrual Loans, Leases, and Other Assets.'' In response to a similar change proposed to the Call Report, a number of institutions commented that they disagreed that delinquent rebooked GNMA loans should be reflected in total past due loans. Because the combined presentation of these assets may obscure their different risk profiles and valuation methodologies, they suggested adding a memoranda line item to the Call Report to report such balances separate from the total. The FFIEC Reports Task Force (RTF) determined that including delinquent rebooked GNMA loans in the body of the past due schedule should not lead to inconsistent disclosure of these loans in the Call Report. The RTF further cited guidance provided by the Securities and Exchange Commission (SEC) indicating that aggregate reported amounts of past due and nonaccrual loans should include such ''re-recognized'' or rebooked delinquent assets, and that organizations may want to provide supplemental disclosure of the fact that these loans are guaranteed by the U.S. Government to assist users in understanding the aggregate amounts of past due loans.[5] In response to public comment and in keeping with SEC guidance, the RTF plans to break out past due and nonaccrual rebooked GNMA loans so that users can make any desired adjustments to the reported values for total past due and nonaccrual loans.

Consistent with changes to be made to the Call Report as of June 30, 2005, the Federal Reserve proposes to add an item to Schedule HC–N, ''Past Due and Nonaccrual Loans, Leases, and Other Assets,'' to collect information related to the GNMA mortgage loan optional repurchase program. Schedule HC–N, item 11, collects information on loans and leases past due or nonaccruing which are wholly or partially guaranteed by the U.S. government. New item 11(b) would collect information on rebooked loans backing GNMA securities that have been repurchased or are eligible for repurchase included in item 11. Current item 11(a), ''Guaranteed portion of loans and leases included in item 11 above,'' would be modified to include the parenthetical phrase ''exclude rebooked 'GNMA loans'.''

The Federal Reserve also proposes to revise current reporting instructions for Schedule HC–N, item 11, which permit institutions to not report as past due delinquent GNMA loans that are repurchased when they are ''in foreclosure status'' at the time of repurchase, provided the government reimbursement process is proceeding

[2] The outstanding balance is the undiscounted sum of all amounts, including amounts deemed principal, interest, fees, penalties, and other under the loan, owed to the bank holding company at the report date, whether or not currently due and whether or not any such amounts have been charged off by the bank holding company. The outstanding balance does not include amounts that would be accrued under the contract as interest, fees, penalties, and other after the report date.

[3] The carrying amount reflects the recorded investment in all purchased impaired loans reported as held for investment, before any allowances established after acquisition for decreases in cash flows expected to be collected.

[4] Loans held for investment are those loans that the institution has the intent and ability to hold for the foreseeable future or until maturity or payoff. Thus, the outstanding balance and carrying amount of any purchased impaired loans that are held for sale would not be reported in these proposed Memorandum items.

[5] Accounting staff members in the SEC's Division of Corporation Finance prepared guidance on ''Current Accounting and Disclosure Issues in the Division of Corporation Finance'' dated November 30, 2004, and updated on March 4, 2005. Both versions of this guidance discuss ''Accounting for Loans or Other Receivables Covered by Buyback Provisions,'' including, but not limited to, loans securitized through GNMA.

normally. The exception from past due reporting for GNMA loans ''in foreclosure status'' predates FAS 140. More specifically, when this exception was added to the FR Y–9C instructions, the accounting standards then in effect did not require the seller to rebook delinquent GNMA loans for which the repurchase option became unconditional unless the loans were actually repurchased. Institutions could choose to repurchase delinquent GNMA loans ''in foreclosure status'' from the loan pool backing a GNMA security rather than continuing to make monthly advances to the pool on these delinquent loans while initiating foreclosure action.

Until the exception was added, an institution that repurchased delinquent loans in foreclosure status had to report the loans as past due in its regulatory reports whereas an institution making monthly advances on delinquent loans without repurchasing them did not have to report these loans as past due. The creation of the exception eliminated this reporting difference, which depended on how the institution chose to handle its servicing responsibilities. In contrast, under FAS 140, delinquent GNMA loans must be rebooked as assets as soon as the repurchase option becomes unconditional, whether or not the loans are repurchased. Consequently, the difference in balance sheet treatment for repurchased delinquent GNMA loans versus those eligible for repurchase that led the agencies to create the exception from past due reporting no longer exists. Therefore the Federal Reserve proposes that all delinquent rebooked GNMA loans, including those in foreclosure status, should be treated consistently and reported as past due in new item 11(b).

**Clarifications**

In March 2005 the Federal Reserve began collecting information on the FR Y–9C on the name and address of the BHC's external auditing firm and the name and e-mail address of the engagement partner. This information is completed only by top-tier BHCs that have a full-scope audit conducted. Effective for the December 31, 2005, report date, in order to confirm that a BHC did have a full-scope audit conducted, the FR Y–9C reporting form would be clarified by adding a checkbox for a respondent to indicate if they had engaged in a full-scope audit as of the December 31, report date. This check box would also be added to the FR Y–9SP as of the December 31, 2005, reporting date.

Schedule HC–R, Regulatory Capital, does not currently allow a BHC to report an amount in column B, ''Items Not Subject to Risk-Weighting,'' item 34, ''Cash and balances due from depository institutions,'' because such items were not expected to exist within this asset category when this schedule was originally designed. However, when amounts are included in column A, ''Totals (from Schedule HC),'' item 34 for certain embedded derivatives; these embedded derivatives should be risk-weighted under the rules for derivatives rather than the rules that apply to the cash and due from asset account. Effective for the September 30, 2005, report date, in order to allow for the proper reporting of these embedded derivatives included in item 34, column A, the Federal Reserve would modify Schedule HC–R to permit the use of column B, item 34.

Board of Governors of the Federal Reserve System, July 6, 2005.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 05–13628 Filed 7–11–05; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**Summary**

*Background*

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Michelle Long—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829.

OMB Desk Officer—Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov.*

*Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:*

*Report title:* Reports of Foreign Banking Organizations.

*Agency form numbers:* FR Y–7, FR Y–7N, FR Y–7NS, and FR Y–7Q.

*OMB control number:* 7100–0125.

*Frequency:* Quarterly and annually.

*Reporters:* Foreign banking organizations (FBOs).

*Annual reporting hours:* 5,384 hours.

*Estimated average hours per response:* FR Y–7: 3.50 hours; FR Y–7N (quarterly): 6 hours; FR Y–7N (annual): 6 hours; FR Y–7NS: 1 hour; FR Y–7Q (quarterly): 1.25 hours; FR Y–7Q (annual): 1 hour.

*Number of respondents:* FR Y–7: 257; FR Y–7N (quarterly): 129; FR Y–7N (annual): 137; FR Y–7NS: 170; FR Y–7Q (quarterly): 52; FR Y–7Q (annual): 136.

*General description of report:* This information collection is mandatory (12 U.S.C. 601–604a, 611–631, 1844(c), 3106, and 3108(a)). Confidential treatment is not routinely given to the data in these reports. However, the FR Y–7Q data will be held confidential until 120 days after the as-of date. Also, confidential treatment for information, in whole or in part, on any of the reporting forms can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act [5 U.S.C. 522(b)(4) and (b)(6)].

*Abstract:* The FR Y–7 is filed by all foreign banking organizations (FBOs) that engage in banking in the United States, either directly or indirectly, to update their financial and organizational information. The Federal Reserve uses information to assess an FBO's ability to be a continuing source of strength to its U.S. banking operations and to determine compliance with U.S. laws and regulations.

The FR Y–7N collects financial information for U.S. nonbank subsidiaries held by FBOs other than through a U.S. bank holding company or bank. This report consists of a balance sheet and income statement; information on changes in equity capital, changes in the allowance for loan and lease losses, off-balance-sheet items, and loans; and a memoranda section. The FR Y–7NS collects net income, total assets, equity capital, and

total off-balance-sheet items for smaller, less complex subsidiaries.

The FR Y–7Q collects consolidated capital and asset information from all FBOs. The report collects tier 1 capital, total risk-based capital, risk-weighted assets, and total assets.

*Current actions:* On October 25, 2004, the Federal Reserve issued for public comment proposed revisions to the FR Y–7 (69 FR 62269). The Federal Reserve proposed to revise the FR Y–7 by requiring that only top-tier FBOs file the FR Y–7 report, modifying the cover pages, changing the order of the report and instructions, and clarifying several areas in the instructions. The Federal Reserve proposed to revise the FR Y–7 to be consistent with the reporting requirements detailed in the Annual Report of Bank Holding Companies (FR Y–6; OMB No. 7100–0124), Report of Changes in Organizational Structure (FR Y–10; OMB No. 7100–0297), and the Report of Changes in FBO Organizational Structure (FR Y–10F; OMB No. 7100–0297). The proposed revisions to the FR Y–7 were to be effective beginning with fiscal year-ends of December 31, 2004; the Federal Reserve requested specific comment on the appropriateness of this effective date. The Federal Reserve also proposed to revise the FR Y–7N reporting instructions with respect to balances due from related organizations, to insure consistent reporting of unconsolidated subsidiaries, and to parallel changes proposed for other nonbank subsidiary reports. The revisions to the FR Y–7N were to be effective as of the March 31, 2005, report date. The Federal Reserve received seven comment letters from: two international trade associations, three foreign banking organizations (FBOs), and two law firms. The comments are summarized and addressed below.

*Top-Tier FBO Filing*

The Federal Reserve originally proposed requiring that only top-tier FBOs file the FR Y–7 report, consistent with the reporting requirement of the Annual Report of Bank Holding Companies (FR Y–6; OMB No. 7100–0124) filed by domestic bank holding companies. All seven commenters expressed concerns about the feasibility of implementing this requirement. Commenters stated that the proposal, under which a top-tier FBO would be required to file on behalf of another foreign bank in which it had only a minority interest, would pose both legal and practical problems. Because the top-tier FBO may not have control of the minority-owned bank under applicable foreign law, the top-tier FBO might not be able to provide the information required by the FR Y–7 on a consolidated basis. One commenter specifically noted that the top-tier FBO often does not have any practical ability to control or require the minority interest investment to disclose what is considered confidential, proprietary information.

In light of these comments, the Federal Reserve will withdraw the proposed requirement that only top-tier FBOs file the FR Y–7 and retain the current requirements.

*Confidential Treatment of Shareholder Information*

The Federal Reserve proposed adding language to the confidentiality provisions of the FR Y–7 stating that it is Board policy to disclose information about persons owning 10 percent or more of any class of voting shares of a FBO absent a showing of a ''well-defined present threat to the liberty or personal security of individuals.'' Information on shareholders of FBOs is collected under Report Item 3. Similar language has appeared on the FR Y–6 for several years.

Commenters expressed concern that the proposed language would change the operative standard under the Freedom of Information Act (''FOIA'') for withholding personal information [1] and would discourage or preclude filers from arguing for withholding based on other grounds (*e.g.*, that foreign law prohibits the public disclosure of shareholder information). One commenter expressed concern that a definition of ''well-defined, present threat to an individual's liberty or personal security'' was not included.

The proposed language does not change the operative FOIA standard; rather, it puts filers on notice that the Board considers the public interest in disclosure of information to be so strong that it generally will be considered to be outweighed only with this type of showing. The proposed language does not forbid filers from raising other, lesser grounds for withholding.

The Federal Reserve will supplement the proposed text in a manner that would put reporters on notice of the Board's view of the strong public interest in the public availability of shareholder information while emphasizing that submitters may request confidentiality on any ground available under the FOIA.

*Signature Requirement*

The Federal Reserve proposed that a director and officer of the FBO certify that the report has been prepared in conformance with the instructions. Five commenters argued that it was not reasonable to have a managing board member of the top-tier FBO sign the report which represents information from international banks with operations in a number of jurisdictions. They note that the data reported on the FR Y–7 most often is compiled by non-executive employees who are most familiar with that information. They emphasize that the completed forms typically are signed by high-level individuals either within the U.S. operations structure or responsible for the FBO's foreign operations and suggest that the proposed change could result in the reporting of less accurate or less complete information. They also suggest that language differences might impede efforts to obtain a higher-level signature.

The Federal Reserve recognizes the concern addressed by the commenters and believes that accountability issues of this nature are perhaps more appropriately advanced by a FBO's home, rather than host, supervisor. The Federal Reserve will not adopt this proposal and, instead, will retain the existing requirement that the FR Y–7 be signed by an ''authorized official.''

*Implementation Date of Proposed Revisions*

The Federal Reserve had proposed to make the changes to the FR Y–7 effective for fiscal years beginning December 31, 2004. Six commenters expressed concerns about their ability to meet this deadline, stating they needed additional time to make changes to their reporting systems and procedures.

In response to these comments, the Federal Reserve will delay the implementation date until fiscal years beginning December 31, 2005.

*Expand the Information Required for Companies Held Under Authority of Section 211.23(f)(5) of the Board's Regulation K*

The Federal Reserve proposed expanding the information collected on companies held under authority of section 2(h)(2) of the BHC Act to include the legal name, location,

[1] Exemption 6 of the FOIA permits the withholding of personal information the disclosure of which would result in a clearly unwarranted invasion of personal privacy. The privacy interest at issue is the individual's interest in restricting dissemination of information about him or her self. Once a request for withholding under exemption 6 is made, an agency must balance the asserted ground for withholding against the public interest in disclosure. The relevant public interest is in disclosure of material that would shed light on the agency's performance of its duties. If, on balance, the public interest outweighs the asserted personal interest, the information must be released absent another basis for withholding.

intercompany ownership and percentage of ownership of voting equity, nonvoting equity, or other interests. This change is needed to ensure that the Federal Reserve receives sufficient information to be able to verify reporters' compliance with the requirements of section 211.23(f)(5) of Regulation K (12 CFR 211.23(f)(5)). Four commenters expressed concern with regard to the increased burden in obtaining and reporting this level of detail from these types of companies.

The Federal Reserve acknowledges that the proposal would increase the filing burden of reporters. However, any burden should be minimal inasmuch as reporters are required to maintain the requested information for internal compliance purposes. This nominal increase in burden is outweighed by the Federal Reserve's need for the requested information.

Upon review of this proposal, the Federal Reserve identified areas in which the proposed language of Report Item 2b could be improved. These improvements will be reflected in the report.

**Comments Not Related to the Proposed Changes**

*Certain Interests Not Reportable Under Report Item 2b*

Since the FR Y–7 was last amended, counsel for one FBO asked whether foreign banks need to monitor holdings in dealing accounts at their foreign broker-dealers to determine whether those holdings comply with section 211.23(f)(5) of Regulation K. The commenter noted that foreign banks appear to be taking different approaches in this regard.

Under a 1971 Board interpretation (12 CFR 225.124(d)), a foreign bank holding company may underwrite or deal in shares of stock (including shares of United States issuers) to be distributed outside the United States, provided that shares so acquired are disposed of within a reasonable time (essentially, no longer than one year). Shares held pursuant to this interpretation need not be reported on report item 2b, provided that the holding of the shares is in all respects consistent with the interpretation. The FR Y–7 instructions will be clarified using language from the 1971 Board interpretation.

*Special Purpose Vehicles*

Three commenters requested a broader exemption for the reporting of special purpose vehicles (SPVs). The current exemption only applies to leasing SPVs.

The Federal Reserve will continue to collect information on SPVs and will investigate whether a broader exemption might be practical or warranted in relation to the Federal Reserve's supervisory needs.

*FR Y–7Q Confidentiality*

One commenter asked the Federal Reserve to extend the period of time following filing during which the FR Y–7Q reports are automatically granted confidential status. The current timeframe for not releasing the FR Y–7Q reports to the public is 120 days from the report date. The commenter requested that the timeframe be extended to 180 days.

In considering this comment, the Federal Reserve believes that transparency and disclosure are important and justify the current FR Y–7Q policy and timeframe. As noted by the commenter, extensions of confidentiality are reviewed on a case-by-case basis and determined based on the merits of the argument presented for requesting confidential treatment.

*Future FR Y–7 Revisions*

One commenter requested that the Federal Reserve consider improvements to the process for amending the FR Y–7 and reduce the frequency with which changes are made to the form.

As mandated by the Paperwork Reduction Act, the Federal Reserve must review its information collections a minimum of every three years. However, changes in accounting practices, regulations, and industry practices often necessitate making revisions to reports on a more frequent basis.

Board of Governors of the Federal Reserve System, July 6, 2005.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 05–13629 Filed 7–11–05; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 26, 2005.

**A. Federal Reserve Bank of Cleveland** (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

*1. Charles H. Snyder, Jr., David E. Snyder, Dennis C. Snyder, Elmer A. Snyder, Separate Shares Grandchildren Trust, Mark A. Snyder, Richard G. Snyder, Thomas C. Snyder, and Roger Claypoole*, all of Kittanning, Pennsylvania, collectively known as the Snyder Group; to acquire additional voting shares of Merchants Bancorp of Pennsylvania, Inc., Kittanning, Pennsylvania, and thereby indirectly acquire additional voting shares of Merchants National Bank, Kittanning, Pennsylvania.

Board of Governors of the Federal Reserve System, July 6, 2005.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 05–13627 Filed 7–11–05; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 5, 2005.

**A. Federal Reserve Bank of Atlanta** (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

*1. Civic Bancorp*, Nashville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Civic Bank & Trust, Nashville, Tennessee (in organization).

Board of Governors of the Federal Reserve System, July 6, 2005.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 05–13626 Filed 7–11–05; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 05-13211) published on page 38931 of the issue for Wednesday, July 6, 2005.

Under the Federal Reserve Bank of New York heading, the entry for Fubon Financial Holding Company, Ltd., Taipei, Taiwan, is revised to read as follows:

**A. Federal Reserve Bank of New York** (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

*1. Fubon Financial Holding Co., Ltd.*, Taipei, Taiwan; to engage in limited securities activities through Fubon Securities USA LLC, Pasadena, California, and Fubon Asset Management USA, LLC, Arcadia, California, pursuant to sections 225.28(b)(6), (b)(7)(i), (b)(7)(ii), (b)(7)(iii), (b)(7)(v), and (b)(8)(i) of Regulation Y.

Comments on this application must be received by July 21, 2005.

Board of Governors of the Federal Reserve System, July 6, 2005.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 05–13624 Filed 7–11–05; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 2005.

**A. Federal Reserve Bank of San Francisco** (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

*1. Discovery Bancorp*, San Marcos, California; to acquire Celtic Capital Corporation, Santa Monica, California, and thereby engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, July 6, 2005.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc.05–13625 Filed 7–11–05; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 9:30 a.m., Monday, July 18, 2005.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**FOR FURTHER INFORMATION CONTACT:** Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, July 8, 2005.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 05–13769 Filed 7–8–05; 12:52 pm]

**BILLING CODE 6210–01–S**

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act Notice

**TIME AND DATE:** 9 a.m. (EDT), July 18, 2005.

**PLACE:** 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

**STATUS:** Parts will be open to the public and parts closed to the public.

**MATTERS TO BE CONSIDERED:**

**Parts Open to the Public**

1. Approval of the minutes of the June 20, 2005, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Quarterly Investment Policy report.

**Parts Closed to the Public**

4. Procurement.

5. Personnel.

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: July 8, 2005.

**Elizabeth S. Woodruff,**

*Secretary to the Board, Federal Retirement Thrift Investment Board.*

[FR Doc. 05–13832 Filed 7–8–05; 3:29 pm]

**BILLING CODE 6760–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Meeting of the Citizens' Health Care Working Group

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Notice of public meeting and hearing.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting and hearing of the Citizens' Health Care Working Group mandated by section 1014 of the Medicare Modernization Act.

**DATES:** The meeting will be held on Thursday, July 21, 2005, from 1 p.m. to 5 p.m. The hearing will be held Friday, July 22, 2005, from 8:30 a.m. to 3:30 p.m.

**ADDRESSES:** The meeting will be held at Intermountain Health Care, Board Room 22, 22nd Floor, 36 South State Street, Salt Lake City, Utah 84111. The hearing will be held at the Salt State Capitol, Room 125 West Building, 350 North Main Street, Salt Lake City, Utah 84101. The meeting and hearing are open to the public.

**FOR FURTHER INFORMATION CONTACT:** Caroline Taplin, Citizens' Health Care Working Group, at (301) 443–1514 or *ctaplin@ahrq.gov.* If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Donald L. Inniss, Director, Office of Equal Employment Opportunity Program, Program Support Center, on (301) 443–1144.

The agenda and roster is available on the Citizens' Working Group Web site *http://www.citizenshealth.ahrq.gov.* When transcriptions of the Group's July 21 and 22 meeting and hearing are completed, they will be available on the website.

**SUPPLEMENTARY INFORMATION:** Section 1014 of Public Law 108–173, (known as the Medicare Modernization Act) directs the Secretary of the Department of Health and Human Services (DHHS), acting through the Agency for Healthcare Research and Quality, to establish a Citizens' Health Care Working Group (Citizen Group). This statutory provision, codified at 42 U.S.C. 299 n., directs the Working Group to: (1) Identify options for changing our health care system so that every American has the ability to obtain quality, affordable health care coverage; (2) provide for a nationwide public debate about improving the health care system; and (3) submit its recommendations to the President and the Congress.

The Citizens' Health Care Working Group is composed of 15 members: the Secretary of DHHS is designated as a member by the statute and the Comptroller General of the U.S. Government Accountability Office (GAO) was directed to appoint the remaining 14 members. The Comptroller General announced the 14 appointments on February 28, 2005. A list of the Working group members is available on the Citizens' Working Group Web site *http://www.citizenshealth.ahrq.gov.*

**Agenda**

The meeting on July 21 will be devoted to ongoing Working Group business. Topics to be addressed at the meeting include the work plan for the Working Group, its required Report to the American People and continuing discussion regarding approaches for conducting the community meetings also required by the statute.

At the hearing on July 22, David Walker, Comptroller General of the United States, will give the first presentation. His remarks will be followed by three panels on these topics: health care quality; health information technology and employer/employee initiatives addressing health care quality.

**Submission of Written Information**

In general, individuals or organizations wishing to provide written information for consideration by the Citizens' Health Care Working Group should submit information electronically to *citizenshealth@ahrq.hhs.gov.* The Working Group invites submissions that address the topics to be addressed at the July 21 meeting listed above. Since all electronic submissions will be posted on the Working Group Web site, separate submissions by topic will facilitate review of ideas submitted on each topic by the Working Group and the public.

Dated: July 7, 2005.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 05–13719 Filed 7–8–05; 9:36 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Meeting of the Citizens' Health Care Working Group

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Notice of public hearing.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a hearing of the Citizens' Health Care Working Group mandated by section 1014 of the Medicare Modernization Act. The Hearing will be conducted by the Hearings Committee of the Working Group.

**DATES:** The hearing will be held on Tuesday, July 26, 2005 from 8 a.m. to 2:30 p.m.

**ADDRESSES:** The hearing will be held in Houston, Texas at the Christus St. Joseph Hospital, 1919 La Branch, in the George Strake Building on the 9th floor. The hearing is open to the public.

**FOR FURTHER INFORMATION CONTACT:** Caroline Taplin, Citizens' Health Care Working Group, at (301) 443–1514 or *ctaplin@ahrq.gov.* If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Donald L. Inniss, Director, Office of Equal Employment Opportunity Program, Program Support Center, on (301) 443–1144.

The agenda and roster is available on the Citizens' Working Group Web site, *http://www.citizenshealth.ahrq.gov.* When a transcription of the Group's July 26 hearing is completed, it will be available on the Web site.

**SUPPLEMENTARY INFORMATION:** Section 1014 of Public Law 108–173, (known as the Medicare Modernization Act) directs the Secretary of the Department of Health and Human Services (DHHS), acting through the Agency for Healthcare Research and Quality, to establish a Citizens' Health Care Working Group (Citizens Group). This statutory provision, codified at 42 U.S.C. 299 n., directs the Working Group to: (1) Identify options for changing our health care system so that every American has the ability to obtain

quality, affordable health care coverage; (2) provide for a nationwide public debate about improving the health care system; and (3) submit its recommendations to the President and the Congress.

The Citizens' Health Care Working Group is composed of 15 members: the Secretary of DHHS is designated as a member by the statute and the Comptroller General of the U.S. Government Accountability Office (GAO) was directed to appoint the remaining 14 members. The Comptroller General announced the 14 appointments on February 28, 2005. A list of the Working Group members is available on the Citizens' Working Group Web site *http://www.citizenshealth.ahrq.gov.*

**Agenda**

The hearing on July 26 will consist of four panels addressing these topics: Hispanic health issues, rural health, institutional-based care and home and community care, and retiree health care issues.

Dated: July 7, 2005.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 05–13720 Filed 7–8–05; 9:36 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Fellowship grant applications will be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

*SEP Meeting on:* Fellowship applications (F31 & F32).

*Date:* July 11, 2005 (open on July 11 from 11 a.m. to 11:10 a.m. and closed for the remainder of the telephone conference call meeting).

*Place:* John M. Eisenberg Building, 540 Gaither Road, OEREP Conference Room, Rockville, Maryland 20850.

*Contact Person:* Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

This notice is being published less than 15 days prior to the July 11 meeting, due to the time constraints of reviews and funding cycles.

Dated: June 30, 2005.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 05–13612 Filed 7–11–05; 8:45 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Hematologic Cancer Healthcare Provider Education Program

*Announcement Type:* New.
*Funding Opportunity Number:* AA191.
*Catalog of Federal Domestic Assistance Number:* 93.283.
*Key Dates:*
*Application Deadline:* August 11, 2005.

**I. Funding Opportunity Description**

**Authority:** This program is authorized under Sections 301(a) and 317(k)(2), of the Public Health Services Act, 42 U.S.C. Sections 241(a) and 247b(k)(2) as amended.

*Purpose:* The purpose of the program is to provide information and education among healthcare providers with respect to hematologic cancers. The successful implementation of this program will result in increased efforts to address hematologic cancer education, awareness and survivorship among healthcare providers. This program addresses the ''Healthy People 2010'' focus area 3, Cancer:

Objective 3–1 Reduce the overall cancer death rate; and

Objective 3–15 Increase the proportion of cancer survivors who are living five years or longer after diagnosis.

Measurable outcomes of the program will be in alignment with the following overarching CDC health promotion objectives: To reduce the health and economic consequences of the leading causes of death and disability and ensure a long, productive, healthy life for all people.

This announcement is only for non-research activities supported by CDC/ATSDR. If research is proposed, the application will not be reviewed. For the definition of research, please see the CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm.*

*Activities*

Awardee must submit a project proposal that supports activities related to the development and implementation of interactive Web-based health education and communication for health care providers on the signs, symptoms and current treatment of blood cancer.

Awardee Activities for this program are as follows:

- Develop an electronic based consultation system to provide physician-to-physician diagnostic and medical care consultation services on the signs and symptoms of all blood cancers.
- Develop a custom designed blood cancer Web site with the most up-to-date clinical content available and professional training courses developed by internal and/or external sources.
- Describe how the Web site and consultation system will provide secure communications and integrated Web-based services to physicians and other clinicians which may include integrated HIPAA-compliant secure e-mail, and online clinical consultation services.
- Describe how access will be secure and limited as appropriate to clinicians and physicians.
- Develop and implement an evaluation plan and quality control measures to ensure the most accurate and timely information is provided over the Web site and consultation system.

**II. Award Information**

*Type of Award:* Grant.
*Fiscal Year Funds:* 2005.
*Approximate Total Funding:* $1,000,000 (This amount is an estimate, and is subject to availability of funds).

*Approximate Number of Awards:* Three.

*Approximate Average Award:* $350,000 per award (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

*Floor of Award Range:* None.

*Ceiling of Award Range:* $500,000 (This ceiling is for the first 12-month budget period).

*Anticipated Award Date:* August 31, 2005.

*Budget Period Length:* 12 months.

*Project Period Length:* One year.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

**III. Eligibility Information**

*III.1. Eligible Applicants*

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies, such as:

- Public nonprofit organizations.
- Private nonprofit organizations.
- For profit organizations.
- Universities.
- Research institutions.
- Hospitals.
- Community-based organizations.

Competition is limited to the National Cancer Institutes (NCI)—39 designated Comprehensive Cancer Centers (CCC). Congress strongly encourages CDC to support activities related to the development of interactive Web based education for health care providers on the signs, symptoms and current treatment of blood cancer by comprehensive cancer centers. The CCCs provide a unique opportunity to address barriers to prevention and screening, improve quality of care, and improve the priority population's access to cancer prevention, early detection, and survivorship programs. The centers conduct extensive ancillary cancer-related activities such as outreach, education and information dissemination. Through all of these activities combined, the centers play an important role in their communities and regions and serve to influence standards of cancer prevention and treatment related to promotion of hematological health education, awareness, and information dissemination. Distinct from other cancer centers the CCCs have been recognized as all-encompassing in scope (*e.g.* outreach, education, and information dissemination), innovative in approach, and inclusive in their design to develop interventions that can reach all American. They serve as the classified cornerstone by NCI in influencing standards of cancer prevention and treatment in the cancer community. The list of applicants may be found at: *http://www3.cancer.gov/cancercenters/centerslist.html.*

*III.2. Cost Sharing or Matching*

Matching funds are not required for this program.

*III.3. Other*

CDC will accept and review applications with budgets greater than the ceiling of the award range.

Special Requirements

If the application is incomplete or non-responsive to the special requirements listed in this section, it will not be entered into the review process. The applicant will be notified the application did not meet submission requirements.

- Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- Applications are limited to the National Cancer Institutes (NCI)—39 designated Comprehensive Cancer Centers (CCC). The list of applicants may be found at: *http://www3.cancer.gov/cancercenters/centerslist.html.*
- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

**IV. Application and Submission Information**

*IV.1. Address to Request Application Package*

To apply for this funding opportunity use application form PHS 5161–1.

*Electronic Submission:* CDC strongly encourages the applicant to submit the application electronically by utilizing the forms and instructions posted for this announcement on *http://www.Grants.gov,* the official Federal agency wide E-grant Web site. Only applicants who apply on-line are permitted to forego paper copy submission of all application forms.

*Paper Submission:* Application forms and instructions are available on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If access to the Internet is not available or if there is difficulty accessing the forms on-line, contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: (770) 488–2700 and the application forms can be mailed.

*IV.2. Content and Form of Submission*

*Application:* A project narrative must be submitted with the application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 20—If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

The narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

Statement of Need

Identify opportunities for development and/or improvement of cancer prevention and control activities with an emphasis on hematologic cancer survivorship at the regional and local levels. Describe the extent to which the proposed project will fill existing gaps and provide a brief description of each activity.

Work Plan

Submit a narrative and work plan (work plan may be submitted in a table format) for the project with established goals, objectives, strategies, measures of effectiveness, responsible staff and time lines. In the narrative, provide a concise description of the project and how it will be implemented and evaluated over the one-year project period. The work plan should address only activities to be conducted during the one year project period.

Management Plan

Submit a narrative for the overall project that describes a proposed management structure that addresses the use of qualified and diverse technical, program, administrative staff, organizational relationships and a system for sound fiscal management.

Evaluation Plan

For the project, describe a plan for monitoring progress toward achieving the objectives in the work plan.

Budget and Justification

Provide a budget for the project described in this program announcement. Submit a detailed budget and narrative justification that is consistent with the purpose of the program and is related to the proposed activities. Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information may include:

- Curriculum Vitas.
- Resumes.
- Job descriptions.
- Organization charts.
- Letters of Support.

The agency or organization is required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/grantmain.htm.*

If the application form does not have a DUNS number field, please write the DUNS number at the top of the first page of the application, and/or include the DUNS number in the application cover letter.

Additional requirements that may require submittal of additional documentation with the application are listed in section ''VI.2. Administrative and National Policy Requirements.''

*IV.3. Submission Dates and Times*

*Application Deadline Date:* August 11, 2005.

*Explanation of Deadlines:* Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date.

Applications may be submitted electronically at *http://www.grants.gov.* Applications completed on-line through Grants.gov are considered formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov.* Electronic applications will be considered as having met the deadline if the application has been submitted electronically by the applicant organization's Authorizing Official to Grants.gov on or before the deadline date and time.

If submittal of the application is done electronically through Grants.gov (*http://www.grants.gov*), the application will be electronically time/date stamped, which will serve as receipt of submission. Applicants will receive an e-mail notice of receipt when CDC receives the application.

If submittal of the application is by the United States Postal Service or commercial delivery service, the applicant must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives the submission after the closing date due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, the applicant will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

If a hard copy application is submitted, CDC will not notify the applicant upon receipt of the submission. If questions arise on the receipt of the application, the applicant should first contact the carrier. If the applicant still has questions, contact the PGO–TIM staff at (770) 488–2700. The applicant should wait two to three days after the submission deadline before calling. This will allow time for submissions to be processed and logged.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If the submission does not meet the deadline above, it will not be eligible for review, and will be discarded. The applicant will be notified that the application did not meet the submission requirements.

*IV.4. Intergovernmental Review of Applications*

Executive Order 12372 does not apply to this program.

*IV. 5. Funding Restrictions*

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Funds may not be used for the purchase or lease of land or buildings, construction of facilities, renovation of existing space, or the delivery of clinical or therapeutic services.

If requesting indirect costs in the budget, a copy of the indirect cost rate agreement is required. If the indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing the budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

*IV.6. Other Submission Requirements*

Application Submission Address

*Electronic Submission:* CDC strongly encourages applicants to submit applications electronically at *http://www.Grants.gov.* The application package can be downloaded from *http://www.Grants.gov.* Applicants are able to complete it off-line, and then upload and submit the application via the Grants.gov Web site. E-mail submissions will not be accepted. If the applicant has technical difficulties in Grants.gov, customer service can be reached by e-mail at *http://www.grants.gov/CustomerSupport* or by phone at 1–800–518–4726 (1–800–518-GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday.

CDC recommends that submittal of the application to Grants.gov should be early to resolve any unanticipated difficulties prior to the deadline. Applicants may also submit a back-up paper submission of the application. Any such paper submission must be received in accordance with the requirements for timely submission detailed in section IV.3. of the grant announcement. The paper submission must be clearly marked: ''BACK-UP FOR ELECTRONIC SUBMISSION.'' The paper submission must conform to all requirements for non-electronic submissions. If both electronic and back-up paper submissions are received by the deadline, the electronic version will be considered the official submission.

It is strongly recommended that the applicant submit the grant application using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If the applicant does not have access to Microsoft Office products, a PDF file may be submitted. Directions for creating PDF files can be found on the Grants.gov Web site. Use of file formats other than Microsoft Office or PDF may result in the file being unreadable by staff.

*Paper Submission:* Applicants should submit the original and two hard copies of the application by mail or express delivery service to:

Technical Information Management—

AA191, CDC Procurement and Grants

Office, 2920 Brandywine Road, Atlanta, GA 30341.

**V. Application Review Information**

*V.1. Criteria*

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The application will be evaluated against the following criteria:

1. Work Plan (40 points)

How complete and comprehensive is the plan for the entire project period (20)? Is the plan adequate to carry out the proposed objectives (10)? Does the plan include quantitative process and outcome measures (10)?

2. Evaluation Plan (30 points)

Is the proposed evaluation plan feasible (15)? To what extent will the evaluation plan allow the applicant to monitor progress toward meeting project objectives (15)?

3. Management Plan (20 points)

How do you designate appropriate experience (5)? Are the staff roles clearly defined (5)? Will the staff be sufficient to accomplish the program goals (5)? Does the plan address the use of qualified and diverse staff, and describe internal and external communications systems and prior experience with conducting activities described in this program announcement (5)?

4. Statement of Need (10 points)

To what extent does the applicant justify the need, identify opportunities, and existing gaps related to the program announcement for the target community?

5. Budget and Justification (not scored)

The extent to which the proposed budget is adequately justified, reasonable, and consistent with this program announcement and the applicant's proposed activities.

*V.2. Review and Selection Process*

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NCCDPHP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel comprised of CDC Staff outside of the funding division will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. The objective review process will follow the policy requirements as stated in the GPD 2.04 [*http://198.102.218.46/doc/gpd204.doc*].

Applications will be funded in order by score and rank determined by the review panel. CDC will provide justification for any decision to fund out of rank order.

*V.3. Anticipated Announcement and Award Dates*

August 31, 2005.

**VI. Award Administration Information**

*VI.1. Award Notices*

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

*VI.2. Administrative and National Policy Requirements*

Successful applicants must comply with the administrative requirements outlined in 45 CFR part 74 and part 92 as appropriate. The following additional requirements apply to this project:

- AR–6 Patient Care
- AR–8 Public Health System Reporting Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status
- AR–24 Health Insurance Portability and Accountability Act Requirements
- AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

An additional Certifications form from the PHS5161–1 application needs to be included in the Grants.gov electronic submission only. Applicants should refer to *http://www.cdc.gov/od/pgo/funding/PHS5161–1–Certificates.pdf.* Once the applicant has filled out the form, it should be attached to the Grants.gov submission as Other Attachments Form.

*VI.3. Reporting Requirements*

The applicant must provide CDC with an original, plus two hard copies of the following reports:

1. Final report, due 90 days after the end of the budget period. This report must include the following elements:

a. A succinct description of the program accomplishments and progress made in meeting each Current Budget Period Activities Objectives during the previous six months of the budget period.

b. The reason(s) for not meeting established program objectives and strategies to be implemented to achieve unmet objectives.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

**VII. Agency Contacts**

We encourage inquiries concerning this announcement. For general questions, contact:

Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341; Telephone: (770) 488–2700.

For program technical assistance, contact:

Steven L. Reynolds, MPH, Project Officer, Associate Director for Program and Policy, Division of Cancer Prevention and Control, 4770 Buford Hwy., NE., Mailstop K–64, Atlanta, GA 30341; Telephone: (770) 488–4260; E-mail: *slr6@cdc.gov.*

For financial, grants management, or budget assistance, contact:

Nealean Austin, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341; Telephone: (770) 488–2722; E-mail: *nea1@cdc.gov.*

### VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Dated: July 6, 2005.

**William P. Nichols,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 05–13616 Filed 7–11–05; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement AA046]**

### Pioneering Healthy Communities; Notice of Intent To Fund Single Eligibility Award

#### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to expand the community health promotion leadership and enhance the capacity of the Young Men's Christian Association (YMCA) of the USA trainers, staff and volunteers. The successful implementation of the program will result in the effective integration of public health practice in communities and community institutions to increase the quality, availability, and effectiveness of educational and community-based programs designed to prevent disease, improve health and quality of life, embrace diversity, connect people and resources, and create a sense of community. This program addresses the ''Healthy People 2010'' focus area 7, Educational and Community-Based Programs.

The Catalog of Federal Domestic Assistance number for this program is 93.283.

#### B. Eligible Applicant

Assistance will be provided only to the YMCA of the USA. The FY 2005 Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Bill, Senate Report No. 108–345 recognized the unique work of the YMCA of the USA through its Pioneering Healthier Communities initiative and directed CDC to provide funding to the organization to implement their Healthier Communities action plan. For over 150 years, YMCAs have developed initiatives and programs that have helped improve the physical, social, emotional, and spiritual health for millions of Americans in diverse communities across the country. The health benefits from YMCA's health and wellness programs are a critical part of the nation's efforts to arrest the epidemic of chronic diseases.

Pioneering Healthier Communities is a key component of a broad YMCA initiative with the goal of improving the health and wellness of all Americans. Through this initiative, YMCAs will partner with community members to lead change in their communities by building coalitions and strategies to battle the epidemics of chronic disease and obesity, as well as the associated rise factors of physical inactivity and poor nutrition.

#### C. Funding

Approximately $1,400,382 is available in FY 2005 to fund this award. It is expected that the award will begin on or before August 31, 2005, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

#### D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Michael Sells, Project Officer 4770 Buford Highway, Mailstop K–30, Atlanta, GA 30341, Telephone: 770–488–5465, E-mail: *msells@cdc.gov.*

Dated: July 6, 2005.

**William P. Nichols,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 05–13623 Filed 7–11–05; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panels (SEP): Centers of Excellence Public Health Informatics, Program Announcement (PA) #CD 05 109

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Centers of Excellence Public Health Informatics, Program Announcement (PA) #CD 05 109.

*Times and Dates:* 7:30 p.m.–10:30 p.m., August 10, 2005 (Closed) 8:30 a.m.–5:30 p.m., August 11, 2005 (Closed).

*Place:* Renaissance Concourse Hotel, One Hartsfield Centre Parkway, Atlanta, GA 30354, Telephone Number (404) 209–9999.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters To Be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to: Centers of Excellence Public Health Informatics, Program Announcement (PA) #CD 05 109.

*Contact Person for More Information:* George R. Bockosh, Engineer, National Institute for Occupational Safety and Health, CDC, National Personal Protective Technology Laboratory, 626 Cochrans Mill Road, Mailstop P05, Pittsburgh, PA 15236, telephone (412) 386–6465.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 1, 2005.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 05–13614 Filed 7–11–05; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control

Special Emphasis Panels (SEP): Centers of Excellence in Health Marketing and Health Communication, Program Announcement #CD 05 108

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Centers of Excellence in Health Marketing and Health Communication, Program Announcement #CD 05 108.

*Times and Dates:* 7:30 p.m.–10:30 p.m., August 8, 2005 (Closed). 8 a.m.–5:30 p.m., August 9, 2005 (Closed).

*Place:* Renaissance Concourse Hotel, One Hartsfield Centre Parkway, Atlanta, GA 30354, Telephone Number 404.209.9999.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters to be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to: Centers of Excellence in Health Marketing and Health Communication, Program Announcement #CD 05 108.

*Contact Person for More Information:* Mary Lerchen DrPH, MS, Assistant Director for Research Practices and Peer Review, Office of Public Health Research, 1600 Clifton Road NE., Mailstop D–72, Atlanta, GA 30333, Telephone 404.371.5282.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 1, 2005.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 05–13619 Filed 7–11–05; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–2212–N]**

### Medicaid Program; Meeting of the Medicaid Commission—July 27, 2005

**AGENCY:** Center for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a public meeting of the Medicaid Commission. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Medicaid Commission will advise the Secretary on ways to modernize the Medicaid program so that it can provide high-quality health care to its beneficiaries in a financially sustainable way. This notice also announces the appointment of 28 individuals to serve as members of the Medicaid Commission, including one individual to serve as chairperson.

**DATES:** *The Meeting:* July 27, 2005.

*Special Accommodations:* Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to notify the Executive Secretary by July 19, 2005 (see **FOR FURTHER INFORMATION CONTACT**).

**ADDRESSES:** *The Meeting:* The meeting will be held at the following address: Renaissance Hotel, 999 9th Street, NW., Washington, DC 20001, United States, toll-free 1–800–468–3571, telephone: 1 (202) 898–9000, fax: 1 (202) 289–0947.

*Web site:* You may access up-to-date information on this meeting at *http://www.cms.hhs.gov/advisorycommittees/.*

**FOR FURTHER INFORMATION CONTACT:** Mary Beth Hance, Executive Secretary, (410) 786–4299.

**SUPPLEMENTARY INFORMATION:** On May 24, 2005, we published a notice (70 FR 29765) announcing the Medicaid Commission and requesting nominations for individuals to serve on the Medicaid Commission. This notice announces the first public meeting of the Medicaid Commission. This notice also announces the appointment of 28 individuals to serve as members of the Medicaid Commission, including one individual to serve as chairperson.

*Medicaid Commission Voting Members:* Donald Sundquist (Chairperson), Angus King (Vice Chairperson), Nancy Atkins, Melanie Bella, Gail Christopher, Gwen Gillenwater, Robert Helms, Kay James, Troy Justesen, Tony McCann, Mike O'Grady, Bill Shiebler, and Grace-Marie Turner.

*Medicaid Commission Non-voting Members:* James Anderson, Julianne Beckett, Carol Berkowitz, Maggie Brooks, Mark de Bruin, Valerie Davidson, John Kemp, John Monahan, Joseph Marshall, John Nelson, Joseph Piccione, John Rugge, Douglas Struyk, Howard Weitz, and Joy Johnson Wilson.

*Topics of the Meeting:* The Commission will discuss options to achieve $10 billion in scorable Medicaid savings over 5 years while at the same time make progress toward meaningful longer-term program changes to better serve beneficiaries. The Commission may discuss the need to divide into subgroups for the purpose of focusing on particular issues within this broad subject, including a discussion of which members would serve on which subgroup.

*Procedure and Agenda:* This meeting is open to the public. First, the appointees will be sworn in by a Federal official. Each Commission member will then be given an opportunity to make a self-introduction.

There will be a public comment period at the meeting. The Commission may limit the number and duration of oral presentations to the time available. We will request that you declare at the meeting whether or not you have any financial involvement related to any services being discussed.

After the public and CMS presentations, the Commission will deliberate openly on the topic. Interested persons may observe the deliberations, but the Commission will not hear further comments during this time except at the request of the Chairperson. The Commission will also allow an open public session for any attendee to address issues specific to the topic.

**Authority:** 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

Dated: July 8, 2005.

**Mark B. McClellan,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 05–13790 Filed 7–11–05; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Notice of Correction for Demonstration Projects That Improve Child Well-Being by Fostering Healthy Marriages Within Underserved Communities

**AGENCY:** Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services.

*Funding Opportunity Title:* Demonstration Projects that Improve Child Well-Being by Fostering Healthy Marriages Within Underserved Communities.

**ACTION:** Notice of correction.

*Funding Opportunity Number:* HHS–2005–ACF–ACYF–CA–0089.

**SUMMARY:** This notice is to inform interested parties of corrections made to the Demonstration Projects that Improve Child Well-Being by Fostering Healthy Marriages Within Underserved Communities program announcement that published on June 8, 2005. The following corrections should be noted:

Under Section *III. 1 Eligible Applicants,* following 'Non-profits that do not have 501 (c) (3) status with the IRS, other than institutions of higher education please add the following eligible applicants: Native American tribal governments (Federally recognized) and Native American tribal

organizations (other than Federally recognized tribal governments).

The final list of eligible applicants for this announcement should read:

''1. Eligible Applicants:

State governments
County governments
City or township governments
Special district governments
Independent school districts
Non-profits having a 501(c)(3) status with the IRS, other than institutions of higher education
Non-profits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education
Native American tribal governments (Federally recognized)
Native American tribal organizations (other than Federally recognized tribal governments)

Under Section *III.1 Eligible Applicants, Additional Information on Eligibility,* please modify the first sentence from:

Applicants, and their partner organizations (if any), must have experience and background in working with children and families in the targeted minority community''.

*To:*

Applicants, and their partner organizations (if any), must have experience and background in working with children and families in the targeted underserved community.

Also under Section *III.1 Eligible Applicants, Additional Information on Eligibility* please modify the fourth sentence from:

Applicants must have a demonstrated capacity to engage children and families in the targeted minority community who are at risk of entering, or are already in the child welfare system.''

*To:*

Applicants must have a demonstrated capacity to engage children and families in the targeted underserved community who are at risk of entering, or are already in the child welfare system.

The only changes to the Demonstration Projects that Improve Child Well-Being by Fostering Healthy Marriages Within Underserved Communities program announcement are explicitly stated in this Notice of Correction. All applications must still be sent on or before the deadline date of August 8, 2005.

For further information please contact Julie Lee at (202) 205–8640.

Dated: June 30, 2005.

**Frank Fuentes,**

*Acting Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 05–13687 Filed 7–11–05; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### State Health Fraud Task Force Grants; Availability of Funds; Request for Applications; Correction; Funding Opportunity Number: FDA–ORA–04–2; Catalog of Federal Domestic Assistance Number: 93.447

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

### I. Funding Opportunity Description

The Food and Drug Administration (FDA) is announcing the availability of grant funds for State Health Fraud Task Force Grant Program support. This announcement supercedes previous announcements of this program, which were published in the **Federal Register** of June 28, 2004 (69 FR 36091), and February 28, 2005 (70 FR 9656). Grant funds will be used to assist agencies in identifying and prosecuting perpetrators of health fraud and acquired immunodeficiency syndrome (AIDS) health fraud; obtain and disseminate information on the use of fraudulent drugs and therapies; disseminate information on approved drugs and therapies; and provide health fraud information obtained by the State Health Fraud Task Force to State health agencies, community based organizations, and FDA staff.

FDA will support projects covered by this notice under sections 1702 through 1706 of title XVII of the Public Health Service Act (42 U.S.C. 300u-1 through 300u-5). FDA's project program is described in the Catalog of Federal Domestic Assistance, No. 93.447.

The State Health Fraud Task Force has the following mission: (1) To assist and educate health professionals and persons with serious illnesses, and to educate them about the dangers and magnitude of health fraud; (2) to assist law enforcement agencies in identifying and prosecuting perpetrators of health fraud; (3) to obtain and disseminate information on the fraudulent drugs and therapies being used and the consequences of their use; (4) to disseminate information on approved drugs and therapies; and (5) to provide health fraud information obtained by the State Health Fraud Task Force to State health agencies, community based organizations, and FDA staff.

State Health Fraud Task Force grants will be awarded only for direct costs incurred to accomplish the mission of the State Health Fraud Task Force Program in educating and combating health fraud.

### II. Award Information

Support of these grants will be for up to 3 years. The number of grants awarded will depend on the quality of the applications received and the availability of Federal funds to support the grant. These grants are not intended to fund food, medical devices, or drug inspections. Only one award will be made per State.

State Health Fraud Task Force grants will be awarded for up to 3 years based on availability of funds and satisfactory performance. The budgets for all years of requested support must be fully justified in the original application.

Support for this program will be in the form of a grant.

*1. Award Amount*

It is anticipated that each year approximately $300,000 will be available for this program. FDA anticipates making approximately 20 awards, not to exceed $15,000, in direct costs only per award per year.

*2. Length of Support*

It is anticipated that FDA will fund these grants at a level requested but not exceeding $15,000 total direct costs only for the first year. An additional 2 years of support up to approximately $15,000 total direct costs only each year will be available, depending upon the following factors: (1) Performance during the preceding year, (2) compliance with regulatory requirements of the award, and (3) availability of Federal funds.

*3. Funding Plan*

The number of grants funded will depend on the quality of the applications received, their relevance to FDA's mission, priorities, and the availability of funds.

### III. Eligibility Information

Applicants are limited to States that have an existing AIDS Health Fraud Task Force or States that are in the process of developing a Health Fraud Task Force.

*1. Eligible Applicants*

This grant program is only available to one State Health Fraud Task Force per State.

*2. Cost Sharing or Matching*

None.

*3. Other*

An application will be considered nonresponsive if any of the following circumstances are met: (1) If it is

received after the specified receipt date; (2) if the total dollar amount requested from FDA exceeds $15,000 per year; (3) if all required original signatures are not on the face, assurance, or certification pages of the application; (4) if there is no original signature copy; (5) if it is illegible; (6) if the material presented is insufficient to permit an adequate review; or (7) if the application demonstrates an inadequate understanding of the intent of the Request For Application (RFA).

A fiscal agent, who will be responsible for the administrative responsibilities for grant funds to conduct their activities, must be identified on the application. A program director, also known as the State Health Fraud Task Force Chair, must be identified as being responsible for submission of the application, and a complete listing of all State Health Fraud Task Force members and their credentials must be included in the application.

Responsiveness is defined as submission of a complete application with original signatures on or before the required submission date as listed previously in this document. If an application is found to be nonresponsive, it will be returned to the applicant without further consideration.

## IV. Application and Submission

### *1. Address to Request Application*

FDA is accepting new applications for this program electronically via Grants.gov. Applicants are strongly encouraged to apply electronically by visiting the Web site *http://www.grants.gov* and following instructions under ''APPLY.'' The applicant must register in the Central Contractor Registration (CCR) database in order to be able to submit the application electronically. Information about CCR is available at *http://www.grants.gov/CCRRegister*. The applicant must register with the Credential Provider for Grants.gov. Information about this requirement is available at *http://www.grants.gov/CredentialProvider*. (FDA has verified the Web site address, but FDA is not responsible for subsequent changes to the Web site after the document publishes in the **Federal Register**).

If applicants experience technical difficulty with online submissions, applicants should contact either Djuana Gibson, Division of Contracts and Grants Management (HFA–500), Food and Drug Administration, 5600 Fishers Lane, rm. 2141, Rockville, MD 20857, 301–827–7177, e-mail: *dgibson@oc.fda.gov*, or the Grants.gov Contact Center at 1–800–518–4726. An application not received in time for orderly processing will be returned to the applicant without consideration.

### *2. Content and Form of Application*

Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria prior to the submission of their applications. All questions of a technical or programmatic nature must be directed to the Office of Regulatory Affairs (ORA) program staff (see section VII of this document) and all questions of an administrative or financial nature must be directed to the grants management staff (see section IV.1 of this document).

No supplemental material or addenda will be accepted after the receipt date.

A properly formatted sample application for grants can be accessed on the Internet at *http://www.fda.gov/ora/fed_state/Innovative_Grants.html*.

The face page of the application should indicate ''Response to RFA–FDA–ORA–04–2.''

The Division of Federal-State Relations will provide meeting guidelines and organization documents as requested.

### *3. Submission Dates and Times*

The application receipt date for fiscal year 2005 is August 11, 2005 for new applications. Each subsequent year that this program is in effect the receipt date will be April 30.

Applications will be accepted from 8 a.m. to 4:30 p.m., Monday through Friday, until the established receipt date.

### *4. Intergovernment Review*

The regulations issued under Executive Order 12372, Intergovernmental Review of Department of Health and Human Services Programs and Activities (45 CFR part 100), apply to this program. Executive Order 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert the SPOC to the prospective application(s) and to receive any necessary instructions on the State's review process. A current listing of SPOCs is included in the application kit or at *http://www.whitehouse.gov/omb/grants/spoc.html*. (FDA has verified the Web site address, but FDA is not responsible for subsequent changes to the Web site after the document publishes in the **Federal Register**). The SPOC should send any State review process recommendations to FDA's administrative contact (see section IV.1 of this document). The due date for the State process recommendations is no later than 60 days after the deadline date for the receipt of applications. FDA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cutoff.

### *5. Funding Restrictions*

Examples of direct costs may include the following items: (1) Conferences/workshops sponsored by the task force, (2) development of public service announcements/campaigns, (3) health fraud brochures, and (4) travel expenses for face-to-face State Health Fraud Task Force meetings. Grant funds may be used to cover the cost of the program director, or task force chair, to attend one non-FDA sponsored health fraud related meeting and one FDA-sponsored National Health Fraud Task Force Steering Committee meeting per year. Grant funds may not be used to purchase meals in conjunction with any activities sponsored by the State Health Fraud Task Force or for any Federal employee to travel to any task force meeting or to participate in any task force activity. FDA region/district representatives may be invited to be liaisons or advisors of the State Health Fraud Task Force but each task force should develop its own guidelines for work, consensus decisionmaking, size, and format.

### *6. Other Submission Requirements*

Do not send applications to the Center for Scientific Research, National Institutes of Health (NIH). Any application sent to NIH that is then forwarded to FDA and not received in time for orderly processing will be deemed unresponsive and returned to the applicant. FDA is able to receive applications via the Internet.

Since October 1, 2003, applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a 9-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, call 1–866–705–5711. Be certain that you identify yourself as a Federal grant applicant when you contact Dun and Bradstreet.

## V. Application Review Information

### *1. Criteria*

Applications will be given an overall score and judged based on all of the following criteria equally: (1) The

content/subject matter and how current and appropriate it is for FDA's mission; (2) the educational outreach plan and how thorough, reasonable, and appropriate it is for accomplishing the mission of the program; (3) the experience, training, and competence of the program director and task force members as described in the application; (4) the reasonableness of the proposed budget given the plan for achieving the objective of the mission of the State Health Fraud Task Force Program; (5) a plan for self-sustaining the task force program in the event that Federal funding were to become unavailable in the future; (6) a brief history of the existing State Health Fraud Task Force and its accomplishments, not to exceed two typewritten pages; (7) a description of the structure of the existing State Health Fraud Task Force including such items as nonprofit organizational status, membership guidelines, or other relevant information to demonstrate the task force as a recognizable structured entity.

*2. Review and Selection Process*

This program is primarily intended for previously established Health Fraud Task Forces. However, consideration will be given to newly formed task forces that meet the requirements of this RFA.

All applications submitted in response to this RFA will first be reviewed by grants management and program staffs for responsiveness.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Applications will be considered for funding on the basis of their overall technical merit as determined through the review process. Other award criteria will include availability of funds and overall program balance. Funding decisions will be made by the Commissioner of Food and Drugs or his designee.

## VI. Award Administration Information

*1. Award Notice*

FDA's Grants Management Office will notify applicants who have been selected for an award. Awards will either be issued on a Notice of Grant Award (Public Health Service (PHS) 5152) signed by the FDA Chief Grants Management Officer and be sent to the applicant by mail or transmitted electronically.

*2. Administrative and National Policy Requirements*

These grants will be subject to all policies and requirements that govern the project grant programs of PHS, including the provisions of 42 CFR part 52, 45 CFR parts 74 and 92, and the PHS Grants Policy Statement.

FDA urges applicants to submit work plans that address specific objectives of ''Healthy People 2010.'' Applicants may obtain a paper copy of the ''Healthy People 2010'' objectives, vols. I and II, for $70 ($87.50 foreign), S/N 017–000–00550–9, by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954. Telephone orders can be placed to 202–512–2250. The document is also available in CD–ROM format, S/N 017–001–00549–5, for $19 ($23.50 foreign), as well as on the Internet at *http://www.health.gov/healthypeople/* under ''Publications.'' (FDA has verified the Web site address, but FDA is not responsible for subsequent changes to the Web site after the document publishes in the **Federal Register**).

*3. Reporting*

Semiannual progress reports as well as a final program progress report are required. The grantee must submit a progress report and two copies to FDA's grants management officer in the middle of each budget period and also within 90 days after the end of each budget period. The final progress report, due 90 days after the end of the project period, must provide full written documentation of the project, copies of any results (as described in the grant application), and an analysis and evaluation of the results of the project.

An annual financial status report (FSR) is due 90 days after the end of each budget period. The final FSR is due 90 days after the end of the project period.

Program monitoring of recipients will be conducted on an ongoing basis and written reports will be reviewed and evaluated at least semiannually by the project officer. Project monitoring may also be in the form of telephone conversations between the project officer/grants management specialist and the principal investigator and/or a site visit with appropriate officials of the recipient organization. The results of these monitoring activities will be recorded in the official file and may be available to the recipient upon request consistent with applicable disclosure statutes and with FDA disclosure regulations.

## VII. Agency Contacts

*Regarding the administrative and financial management aspects of this notice*: Djuana Gibson (see section IV.1 of this document).

*Regarding the programmatic aspects of this notice*: Stephen Toigo, Division of Federal-State Relations (HFC–150), Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, rm. 12–07, Rockville, MD 20857, 301–827–6906, or access the Internet at *http://www.fda.gov/ora/fed_state/default.htm*. For general ORA program information contact your Public Affairs Specialists at *http://www.fda.gov/ora/fed_state/DFSR_Activities/*.

## VIII. Other Information

Data included in the application, if restricted with the legend specified in this section of the document, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on PHS Form 5161–1 were approved and issued under Office of Management and Budget Circular A–102.

Unless disclosure is required under FOIA as amended (5 U.S.C. 552), as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of an application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted and/or proprietary information, shall not be used or disclosed except for evaluation purposes.

Dated: July 6, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–13635 Filed 7–11–05; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[FDA 225–04–4006]**

### Memorandum of Understanding Between the State of Iowa, Department of Public Health, Bureau of Radiological Health, and the Food and Drug Administration

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the State of Iowa, through the Iowa Department of Public Health, Bureau of Radiological Health (the Department), and FDA. The purpose is to authorize the state of Iowa, through the Department, to continue to conduct a State as certifiers program in Iowa under the Mammography Quality Standards Act as amended by the Mammography Quality Standards Reauthorization Act of 1998.

**DATES:** The agreement became effective August 26, 2004.

**FOR FURTHER INFORMATION CONTACT:** Joanne Choy, Division of Mammography Quality and Radiation Programs (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2963.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: June 30, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

**BILLING CODE 4160–01–S**

Control No. 225-04-4006

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE STATE OF IOWA

DEPARTMENT OF PUBLIC HEALTH
BUREAU OF RADIOLOGICAL HEALTH

AND

U.S. FOOD AND DRUG ADMINISTRATION
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH
OFFICE OF COMMUNICATION, EDUCATION, AND RADIATION PROGRAMS

## I. PURPOSE:

The purpose of this Memorandum of Understanding (MOU) is to authorize the State of Iowa, through the Iowa Department of Public Health, Bureau of Radiological Health (Department), to continue to conduct a State as certifiers (SAC) program in Iowa under the Mammography Quality Standards Act (MQSA) (42U.S.C.263b) as amended by the Mammography Quality Standards Reauthorization Act of 1998 (MQSRA). Through this MOU, the United States Food and Drug Administration (FDA) authorizes the Department to enforce MQSA certification standards as approved by the FDA, to issue certificates to mammography facilities to perform inspection of mammography facilities and to take enforcement action against facilities that violate MQSA to ensure safe, reliable, and accurate mammography in Iowa.

## II. BACKGROUND:

The MQSA (Pub. L. 102-539) was enacted on October 27, 1992, to establish national quality standards for mammography. Subsection 354(q) of the MQSA gives the Secretary of Health and Human Services (Secretary) the power to authorize State programs to carry out certain MQSA certification program requirements. The Secretary has delegated authority under subsection 354(q) to FDA. FDA developed a States as Certifiers Demonstration Project (Project) to allow a limited trial of State Programs under subsection 354(q) of the MQSA. The State of Iowa applied to participate in the Project and was approved by FDA on July 8, 1998. The State's participation in the Project was subsequently renewed, through an MOU, on July 30, 1999. The State of Iowa requested FDA's approval to continue to serve as a certifying state agency after the completion of the Demonstration Project. FDA has approved the State's request and authorizes, through this MOU, the State of Iowa to continue to serve in its capacity as a certifying State.

## III. SUBSTANCE OF AGREEMENT:

1. FDA hereby reauthorizes the State of Iowa, through the Department, to carry out the certification requirements of subsections 354(b), (c), (d), (g)(1), (h), (i), and (j) of the MQSA (including the requirements under regulations promulgated pursuant to such subsections). This reauthorization applies to facilities within the Department's jurisdiction.

2. FDA shall continue to carry out subsections 354(e) and (f), may take action under subsections 354(h), (i), and (j) and shall conduct oversight functions under subsections 354(g)(2) and (g)(3) of the MQSA.

3. The State of Iowa shall, in addition, comply with the standards for certification agencies at 21CFR 900.22 and 900.25(b) including but not limited to, the requirements for establishing processes for the following activities:

   - certification and inspection of mammography facilities by qualified MQSA-qualified inspector;
   - appropriate criteria and processes for the suspension and revocation of certificates;
   - prompt investigation of and appropriate enforcement action for facilities performing mammography without certificates, as well as other violations of MQSA;
   - appeals by facilities regarding inspectional findings, enforcement actions, and adverse certification decisions or adverse accreditation decisions after exhausting appeals to their accreditation body;
   - additional mammography review of facilities when the State believes that mammography quality at a facility has been compromised and may present a serious risk to human health;
   - patient and physician notification by the facility when additional mammography review shows that the quality of mammography performed was so inconsistent with established quality standards so as to present a significant risk to human health;
   - timely and accurate electronic transmission of inspection, certification, and compliance data in a format and timeframe determined by FDA;
   - authorization by FDA of changes the State proposes to make to any standard that FDA previously has accepted under 21 CFR 900.21.

4. By October 1st, the beginning of FDA's fiscal year, the State of Iowa shall provide to FDA its plan for inspecting all of the facilities under its jurisdiction during the coming year. At the beginning of each quarter, the State shall provide an update to FDA describing any changes in its annual plan that occurred in the last quarter or are planned for the coming quarter. (Quarters will be calculated on a fiscal rather than calendar year basis, beginning in October and continuing through September of the following year).

5. The State of Iowa will electronically transmit the dates of inspections, and the results of all MQSA facility inspections conducted by the State within 5 business days after conducting the inspection by uploading these data to the MQSA Mammography Program Reporting and Information System (MPRIS) facility inspection data application (FISS).

6. The FDA will bill and charge each inspected mammography facility a fee, in accordance with 42 USC 263b(r)(1), of $509 to cover the FDA's costs for support of the inspection. This fee may be subject to change by FDA. The types of services that will be provided by the FDA are as follows:

   - Training and qualifying inspectors.
   - Billing facilities for the FDA portion of the fees due for annual inspections.
   - Collecting the FDA portion of the facility payments.
   - Developing instrument calibration procedures and calibrating instruments used in the inspections.
   - Supplying, repairing, and replacing inspection equipment.
   - Designing, programming, and maintaining inspection data systems.
   - Administering attributable support to facility inspections.

7. Facilities that qualify as governmental entities (GE) will not be subject to the payment of FDA inspection fees.

8. By the end of each quarter, the State of Iowa shall electronically update and maintain facility noncompliance information via the MPRIS facility compliance tracking data application (FaNTMS) to reflect status and resolution of inspectional findings. Quarters will begin in October and continue through September of the following year.

9. The State of Iowa will, in accordance with 21 CFR 900.23, provide all information as specified by FDA as part of FDA's oversight responsibilities, including keeping FDA's SAC liaison informed of compliance actions as they occur and through resolution (e.g., AMR, PPN, Injunctions, Cease and Desist Order, Suspension, or Revocation).

10. The State of Iowa will provide FDA with updates and revisions to its policies and procedures previously approved by FDA, as appropriate.

11. In the event FDA determines, through its oversight activities under 21 CFR 900.23, or through other means, that the State of Iowa is no longer in substantial compliance with its certification program responsibilities, FDA may take action in accordance with 21 CFR 900.24.

12. FDA will provide to the State of Iowa, under 21 CFR 900.25(a), the opportunity to appeal final actions taken by FDA regarding its approval or withdrawal of approval of the certification body.

13. FDA will provide the State of Iowa with access to the FDA MQSA database (MPRIS).

IV. NAMES AND ADDRESSES OF PARTICIPATING AGENCIES:

State of Iowa:
Bureau of Radiological Health
Iowa Department of Public Health
401 SW 7th Street
Suite D
Des Moines, IA 50309-4611

FDA:
Office of Communication, Education, and Radiation Programs
1350 Piccard Drive
Rockville, MD 20850

V. LIAISON OFFICERS:

For matters and notices related to this MOU:

**A. The contact person for the Department is:**

Donald A. Flater, Chief
Bureau of Radiological Health
Iowa Department of Public Health
401 SW 7th Street, Suite D
Des Moines, IA 50309-4611
Phone: (515) 281-3478
dflater@idph.state.ia.us

**B. The contact person for FDA is:**

Joanne Choy
Food and Drug Administration, HFZ-240
Division of Mammography Quality and Radiation Programs
1350 Piccard Drive
Rockville, MD 20850
Phone: (301) 827-2963
jkc@cdrh.fda.gov

Either party may designate in writing different contact persons or addresses.

VI. **PERIOD OF AGREEMENT**:

This MOU will become effective on the date or as of the acceptance by both parties and will continue until termination in writing by either party with a 30-day prior notice (such notice shall be sent to the addresses listed in Section V.) This MOU may be modified by mutual written consent at any time. The MOU will be formally reviewed by the FDA every seven years, and updated or modified as appropriate.

APPROVED AND ACCEPTED FOR THE STATE OF IOWA

8/26/04

*(Signature and date)*

Mary Mincer Hansen
Director
Iowa Department of Public Health
State of Iowa

APPROVED AND ACCEPTED FOR THE FOOD AND DRUG ADMINISTRATION

8/18/04

*(Signature and date)*

Lynne L. Rice
Director
Office of Communication, Education, and Radiation Programs
Center for Devices and Radiological Health
Food and Drug Administration

[FR Doc. 05–13634 Filed 7–11–05; 8:45 am]
BILLING CODE 4160–01–C

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2005–21003]**

### Collection of Information Under Review by Office of Management and Budget (OMB): 1625–0040

**AGENCY:** Coast Guard, DHS.

**ACTION:** Request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded one Information Collection Request—1625–0040, Continuous Discharge Book, Merchant Mariner Application, Physical Examination Report, Sea Service Report, Chemical Testing and Entry Level Physical Report—abstracted below, to the Office of Information and Regulatory Affairs of the Office of Management and Budget for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

**DATES:** Please submit comments on or before August 11, 2005.

**ADDRESSES:** To make sure that your comments and related material do not reach the docket [USCG–2005–21003] or Office of Information and Regulatory Affiars (OIRA) more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(b) By mail to OIRA, 725 17th St., NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 and (b) OIRA at (202) 395–6566, or e-mail to OIRA at *oira-docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

(b) OIRA does not have a Web site on which you can post your comments.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete Information Collection Request (ICR) are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Ms. Barbara Davis), 2100 Second Street, SW., Washington, DC 20593–0001. The telephone number is (202) 267–2326.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Davis, Office of Information Management, telephone (202) 267–2326 or fax (202) 267–4814, for questions on these documents; or Ms. Andrea M. Jenkins, Program Manager, Docket

Operations, (202) 366–0271, for questions on the docket.

**SUPPLEMENTARY INFORMATION:**

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the Office of Management and Budget (OMB) Control Number of the Information Collection Request (ICR) addressed. Comments to DMS must contain the docket number of this request, [USCG 2005–21003]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before the August 11, 2005.

*Public participation and request for comments:* We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

*Submitting comments:* If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2005–21003], indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

*Viewing comments and documents:* To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

**Previous Request for Comments**

This request provides a 30-day comment period required by OIRA. The Coast Guard has already published the 60-day notice required by 44 U.S.C. 3506(c)(2) (70 FR 21806, April 27, 2005). That notice elicited no comments.

**Information Collection Request**

*Title:* Continuous Discharge Book, Merchant Mariner Application, Physical Examination Report, Sea Service Report, Chemical Testing and Entry Level Physical Report.

*OMB Control Number:* 1625–0040.

*Type of Request:* Reinstatement, with change, of a previously approved collection for which approval has expired.

*Affected Public:* Merchant Mariners.

*Forms:* CG–719A, CG–719B, 719K, CG–719S, and CG–719P.

*Abstract:* The Coast Guard will use the information collected solely for the purpose of determining eligibility for issuance of a merchant mariner credential(s) that is, license, certificate of registry or merchant mariner document.

*Burden Estimates:* The estimated burden has increased from 21,358 hours to 21,875 hours a year.

Dated: July 5, 2005.

**Nathaniel S. Heiner,**

*Acting, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.*

[FR Doc. 05–13648 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revised information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the Public Assistance Progress Report and related forms used to administer the Public Assistance Program.

**SUPPLEMENTARY INFORMATION:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, authorizes the President to provide assistance to State and local governments to help them to respond to and recover from a disaster. In order to receive Federal assistance (*i.e.*, Federal grants) State and local officials and officials of eligible private nonprofit organizations, who have responsibility for response to a major disaster and for the restoration of facilities in the aftermath of such events, must provide information to FEMA. The information is required in accordance with FEMA regulations 44 CFR, Section 206.204(f), Section 206.203(c), Section 206.203(d)(i) and guidance published in FEMA 322, Public Assistance Guide, and FEMA 323, Public Assistance Applicant Handbook. Summary of the Application Process/Forms: (1) The Request for Public Assistance is FEMA's official application form. The Grantee has 30 days from the date of the designation of the area where the damage occurred to submit a completed Request to the Regional Director for each applicant who requests public assistance. (2) Project Worksheet (PW)—The PW identifies the eligible scope of work and includes a quantitative estimate for the eligible work. FEMA or the applicant (sub-grantee), assisted by the State, will prepare a PW for each project. The applicant will have 60 days to identify and report damages to

FEMA. (3) Federal funds are obligated to the State based on the approved PW. (4) The State will then approve sub-grantees based on the PW approved for each applicant. (5) PW Damage Description and Scope of Work Continuation Sheet—The Damage Description and Dimensions and Scope of Work should be listed in the areas provided on the PW. The optional PW—Damage Description and Scope of Work Continuation Sheet provides additional space, if needed, to describe the work necessary to restore the facility to its pre-disaster design. (6) PW Cost Estimate Continuation Sheet—The cost estimate is the estimated cost of repair for the damages described in the Project Description of the PW. The optional PW Cost Estimate Continuation Sheet provides additional space, if needed, to estimate the cost to restore the facility to its pre-disaster condition. (7) PW Maps and Sketches Sheet—The optional PW Maps and Sketches Sheet assist applicants in organizing project documentation. The exact location of the facility is described and a sketch of the facility will assist the applicant in describing the damage in terms of facility features or items requiring repair. (8) PW Photo Sheet—The optional PW Photo Sheet assist applicants in organizing project documentation. The Photo Sheet provides field personnel with specific information that enables facility damages to be documented before work is accomplished. (9) Force Account Labor Summary Record—The optional Force Account Labor Summary Record, is used to record applicant personnel cost. (10) Force Account Equipment Summary Record—The optional Force Account Equipment Summary Record, is used to record applicant equipment costs. (11) Materials Summary Record—The optional Materials Summary Record, is used to record the supplies and materials an applicant may take out of stock or purchase. (12) Contract Work Summary Record—The optional Contract Work Summary Record, is used to record the costs of work that an applicant has done by contract. (13) Rented Equipment Summary Record—The optional Rented Equipment Summary Record, is used to record the cost of rented or leased equipment. (14) Special Considerations Questions—The key to expedited review and approval of emergency-or permanent-work projects is early identification of factors that affect compliance with environmental resources, disaster assistance, and historic preservation legislation and Executive Orders on floodplain, wetlands, and environmental justice. The optional Special Considerations Questions, assists applicants in organizing project documentation. It is more important that any considerations simply be noted on the PW thus alerting FEMA early on in the process to any problems or circumstances expected to result in noncompliance with the approved grant. A condition of all FEMA funded projects is that they conform to State and local laws and ordinances. (15) Applicant's Benefits Calculation Worksheet—The optional Applicant's Benefits Calculation Worksheet is used to record the costs of fringe benefits for force account labor. (16) PNP Facility Questionnaire—The optional PNP Facility Questionnaire is used to help determine the eligibility of specific Private Non-Profit facilities.

**Collection of Information**

*Title:* Public Assistance Progress Report and Program Forms.

*Type of Information Collection:* Revision of a currently approved collection.

*OMB Number:* 1660–0017.

*Form Numbers:* FEMA Form 90–49, Request for Public Assistance; FEMA Form 90–91, Project Worksheet (PW); FEMA Form 90–91A, Damage Description and Scope of Work Continuation Sheet; FEMA Form 90–91B, Cost Estimate Continuation Sheet; FEMA Form 90–91C, Maps and Sketches Sheet; FEMA Form 90–91D, Photo Sheet; FEMA Form 90–120, Special Considerations Questions; FEMA Form 90–121, PNP Facility Questionnaire; FEMA Form 90–123, Force Account Labor Summary Record; FEMA Form 90–124, Materials Summary Record; FEMA Form 90–125, Rented Equipment Summary Record; FEMA Form 90–126, Contract Work Summary Record; FEMA Form 90–127, Force Account Equipment Summary Record; and FEMA Form 90–128, Applicant's Benefits Calculation Worksheet.

*Abstract:* This collection serves as the mechanism to administer the Public Assistance (PA) Program. The application process contains recordkeeping and reporting requirements via mandatory and optional completion of several forms and timeframes. The Progress Report and related forms ensure that FEMA and the State have up-to-date information on PA program grants. The report describes the status of project completion dates, and circumstances that could delay a project. States are responsible for determining reporting requirements for applicants and must submit reports quarterly to FEMA Regional Directors. The date of the report is determined jointly by the State and the Disaster Recovery Manager.

*Affected Public:* State, Local or Tribal government, and Not-For-Profit Organizations.

*Estimated Total Annual Burden Hours:* 132,882 hours.

ANNUAL BURDEN HOURS

| Forms | No. of respondents (A) | Frequency of responses (B) | Burden hours per respondent (C) | Annual responses (AxB) | Total annual burden hours (AxBxC) |
|---|---|---|---|---|---|
| Mandatory Forms: | | | | | |
| FF 90–49 | 148 | 53 | 10 min | 7,844 | 1,333 |
| FF 90–91, FF 90–91A, FF 90–91B, FF 90–91C, FF 90–91D. | 694 | 53 | 90 min | 36,782 | 55,173 |
| FF 90–120 | 658 | 53 | 10 min | 34,874 | 5,929 |
| FF 90–128 | 148 | 53 | 30 min | 7,844 | 3,922 |
| FF 91–121 | 20 | 53 | 30 min | 1,060 | 530 |
| Progress Report | 56 | 4 | 100 hrs | 224 | 22,400 |
| Total—Mandatory | 1724 | 269 | 103 hrs | 88,628 | 89,287 |
| Optional Forms: | | | | | |
| FF 90–123 | 658 | 53 | 15 min | 34,874 | 8,719 |
| FF 90–124 | 658 | 53 | 15 min | 34,874 | 8,719 |
| FF 90–125 | 658 | 53 | 15 min | 34,874 | 8,719 |

ANNUAL BURDEN HOURS—Continued

| Forms | No. of respondents (A) | Frequency of responses (B) | Burden hours per respondent (C) | Annual responses (AxB) | Total annual burden hours (AxBxC) |
|---|---|---|---|---|---|
| FF 90–126 | 658 | 53 | 15 min | 34,874 | 8,719 |
| FF 90–127 | 658 | 53 | 15 min | 34,874 | 8,719 |
| Total Annual Burden | 5,014 | 534 | 104 hrs | 262,998 | 132,882 |

*Estimated Cost:* Annualized cost to all respondents combined is estimated at $3,800,000.00 with an average cost per respondent estimated at $2,906.00.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

**ADDRESSES:** Interested persons should submit written comments to the Section Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Contact Clifford Brown, Program Specialist, Public Assistance Grant Program at 202–646–4136 for additional information. You may contact the Records Management Section for copies of the proposed collection of information at facsimile number (202) 646–3347 or E-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: June 29, 2005.

**Deborah Moradi,**

*Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.*

[FR Doc. 05–13610 Filed 7–11–05; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1590–DR]**

### Nebraska; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1590–DR), dated June 23, 2005, and related determinations.

**EFFECTIVE DATE:** June 23, 2005.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated June 23, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Nebraska, resulting from severe storms and flooding on May 11–12, 2005, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas; Hazard Mitigation throughout the State; and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Thomas J. Costello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nebraska to have been affected adversely by this declared major disaster:

The counties of Adams, Buffalo, Fillmore, Frontier, Hall, Hamilton, Howard, Kearney, Merrick, Seward, and York for Public Assistance.

All counties within the State of Nebraska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public

Assistance Grants; 97.039, Hazard Mitigation Grant Program)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 05–13609 Filed 7–11–05; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### National Communications System

**[Docket No. DHS–2005–0051]**

### Notice of Meeting of the National Security Telecommunications Advisory Committee

**AGENCY:** National Communications System (NCS).

**ACTION:** Notice of open meeting.

**SUMMARY:** The President's National Security Telecommunications Advisory Committee (NSTAC) will meet on Wednesday, July 27, 2005, from 2 p.m. until 3 p.m. The meeting will take place via teleconference and will be open to the public. For access to the conference bridge and meeting materials, interested members of the public should contact Ms. Elizabeth Hart at (703) 289–5948, or by e-mail at *hart_elizabeth@bah.com*, by 5 p.m. on Monday, July 25, 2005.

The NSTAC advises the President of the United States on issues and problems related to implementing national security and emergency preparedness (NS/EP) telecommunications policy. During the call, the members will receive briefings on Exercise Pinnacle and the National Infrastructure Protection Plan and will discuss the NSTAC work plan and task force activities.

**FOR FURTHER INFORMATION CONTACT:** Ms. Alberta Ross, Industry Operations Branch at (703) 235–5526, e-mail: *Alberta.Ross@dhs.gov*, or write the Manager, National Communications System, Department of Homeland Security, IAIP/NCS/N5, Washington, DC 20528-mail stop #8510.

**SUPPLEMENTARY INFORMATION:** *Public Comments:* You may submit comments, identified by Docket Number DHS–2005–0051, by *one* of the following methods:

- EPA Federal Partner EDOCKET Web site: *http://www.epa.gov/feddocket.* Follow instructions for submitting comments on the Web site.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *NSTAC@dhs.gov*. When submitting comments electronically, please include DHS–2005–0051 in the subject line of the message.
- Mail: Office of the Manager, National Communications System, Department of Homeland Security, Washington, DC 20529. To ensure proper handling, please reference DHS–2005–0051 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.

All comments received will be posted without change to *http://www.epa.gov/feddocket,* including any personal information provided. For access to the docket, or to read background documents or comments received, go to *http://www.epa.gov/feddocket.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.*

Dated: July 7, 2005.

**Peter M. Fonash,**

*Deputy Manager, National Communications System.*

[FR Doc. 05–13677 Filed 7–11–05; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered and Threatened Species Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications.

**SUMMARY:** The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended.

**DATES:** To ensure consideration, written comments must be received on or before August 11, 2005.

**ADDRESSES:** Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW., Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

**FOR FURTHER INFORMATION CONTACT:** Chief, Endangered Species Division, (505) 248–6920.

**SUPPLEMENTARY INFORMATION:**

**Permit No. TE–105165**

*Applicant:* U.S. Army'White Sands Missile Range, New Mexico. Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for northern aplomado falcon (*Falco femoralis septentrionalis*) within New Mexico.

**Permit No. TE–048464**

*Applicant:* Joanne Roberts, Phoenix, Arizona. Applicant requests an amendment to an existing permit to conduct presence/absence surveys for Canelo Hills ladies'-tresses (*Spiranthes delitescens*) and Pima pineapple cactus (*Coryphantha scheeri var. robustispina*) within Arizona.

**Permit No. TE–106028**

*Applicant:* Arizona State University, Tempe, Arizona. Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for lesser long-nosed bats (*Leptonycteris curasoae (=sanborni) yerbabuenae*) within Arizona.

**Permit No. TE–103076**

*Applicant:* Transcon Infrastructure, Inc., Mesa, Arizona. Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher *(Empidonax traillii extimus)* within Arizona.

**Permit No. TE–106555**

*Applicant:* Clay Fischer, Austin, Texas. Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species within Texas: jaguarundi *(Herpailurus (=Felis) yagouaroundi cacomitli),* ocelot *(Leopardus (=Felis) pardalis),* black-capped vireo *(Vireo atricapillus),* golden-cheeked warbler *(Dendroica chrysoparia),* southwestern willow flycatcher *(Empidonax traillii extimus),* and Houston toad *(Bufo houstonensis).*

**Permit No. TE–106816**

*Applicant:* Douglas High School, Douglas, Arizona. Applicant requests a new permit for research and recovery purposes to maintain and propagate the current captive population of Yaqui topminnow *(Poeciliopsis occidentalis sonoriensis)* and Yaqui chub *(Gila purpurea)* within Arizona.

**Permit No. TE–106764**

*Applicant:* Gary Roemer, Las Cruces, New Mexico. Applicant requests a new permit for research and recovery purposes to conduct surveys, capture, tag, and draw blood for black-footed ferret *(Mustela nigripes)* within Arizona.

**Authority:** 16 U.S.C. 1531, *et seq.*

Dated: June 29, 2005.

**Joy E. Nicholopoulos,**

*Acting Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.*

[FR Doc. 05–13618 Filed 7–11–05; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–050–1990–NJ]**

### Notice of Emergency Closure of Public Lands to Motorized Vehicle Use

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Pursuant to 43 Code of Federal Regulations (CFR) subpart 8341.2(a), the Bureau of Land Management (BLM) announces the closure of certain BLM-administered public lands to all types of motor vehicle use to protect the desert yellowhead, a plant species and its critical habitat protected by listing under the Endangered Species Act (ESA).

This closure affects public lands located within, and adjacent to, the 360-acre designated critical habitat of the only known population of desert yellowhead (*Yermo xanthocephalus*). Under the ESA, the desert yellowhead is listed as ''threatened.'' Public access leading to, and within, the desert yellowhead and its critical habitat by nonmotorized means, such as by foot or horseback is permitted.

**DATES:** This closure will be effective March 16, 2005, and remain in effect until the threat to this desert yellowhead population and its critical habitat by motorized vehicles has ceased.

**FOR FURTHER INFORMATION CONTACT:** Ray Hanson, Outdoor Recreation Planner, Bureau of Land Management, 1335 Main Street, P.O. Box 589, Lander, Wyoming 82520. Mr. Hanson may also be contacted by telephone: (307) 332–8420.

**SUPPLEMENTARY INFORMATION:** The BLM Lander Field Office is responsible for management of public lands within Fremont, Natrona, Carbon, Sweetwater, and Hot Springs Counties. The management of these lands is addressed in the Lander Resource Management Plan (RMP) Record of Decision (ROD), which was signed in June 1987. Under the authority of the ESA, the RMP provides that no activities will be permitted in habitat for threatened and endangered species that would jeopardize the continued existence of such species. The RMP further provides that neither surface disturbing activities nor surface occupancy will be allowed in known threatened or endangered species habitat.

Because these Wyoming plants are the only known population in the world, the desert yellowhead (*Yermo xanthocephalus*) was listed by the United States Fish and Wildlife Service (USFWS) as ''threatened'' in 2002 and an area of 360 acres of critical habitat was designated. In 2004, the Lander Field Office prepared a biological assessment of the desert yellowhead for review by the USFWS. The USFWS completed a biological opinion for the desert yellowhead in 2005.

This Emergency Closure is necessary to protect the desert yellowhead and its critical habitat from threats posed by increased motorized vehicle use which could easily expand into the critical habitat of this sole population. Reasons for the closure include the effects of motorized vehicle use damaging plant populations and critical habitat of the desert yellowhead.

The following BLM-administered lands are included in this closure:

- The 360 acres of designated desert yellowhead critical habitat including the 10 acres presently occupied by the only known plant population.
- The designated two-track trails leading to the desert yellowhead's critical habitat.

A map of these areas will be posted with this notice at key locations near the closure area, as well as at the BLM's Lander Field Office, 1335 Main Street, Lander, Wyoming 82520.

Emergency closure orders may be implemented as provided in 43 CFR, subparts 8341.2(a) and 8364.1 (a, b, c, and d). Violations of this closure are punishable by a fine not to exceed $1000 and/or imprisonment not to exceed 12 months.

Persons who are administratively exempt from this closure include: any Federal, State, or local officer or employee acting within the scope of their duties, members of any organized rescue or fire-fighting force in performance of an official duty, and any person holding written authorization from the Bureau of Land Management.

Dated: May 5, 2005.

**Alan L. Kesterke,**

*Associate State Director.*

[FR Doc. 05–13766 Filed 7–11–05; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–027–1020–PI–020H; G–05–0165]**

### Notice of Public Meeting, Steens Mountain Advisory Council

**AGENCY:** Department of the Interior, Bureau of Land Management, Burns District Office.

**ACTION:** Notice of Public Meeting for the Steens Mountain Advisory Council.

**SUMMARY:** In accordance with the Steens Mountain Cooperative Management and Protection Act (Steens Act) of 2000, Public Law 106–399, the Federal Land Policy and Management Act of 1976, and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management, and the Steens Mountain Advisory Council will meet as indicated below.

**DATES:** The Steens Mountain Advisory Council will meet at the Bureau of Land Management, Burns District Office, 28910 Hwy 20 West, Hines, Oregon, 97738 on August 11 and 12, 2005. Both days will begin at 8 a.m., local time, and will end at approximately 4:30 p.m., local time.

**SUPPLEMENTARY INFORMATION:** The Steens Mountain Advisory Council was appointed by the Secretary of the Interior on August 14, 2001, pursuant to the Steens Act and re-chartered in August 2003. The Steens Mountain Advisory Council's purpose is to provide representative counsel and advice to the Bureau of Land Management regarding (1) new and unique approaches to management of the land within the bounds of the Steens Mountain Cooperative Management and Protection Area, (2) cooperative programs and incentives for landscape management that meet human needs, maintain and improve the ecological and economic integrity of the area, and (3) preparation and implementation of a management plan for the Steens Mountain Cooperative Management and Protection Area.

Topics to be discussed at this meeting include operating protocols, challenges and opportunities for collaboration, visioning, roles of the Steens Mountain Advisory Council and the Bureau of Land Management, ground rules, dispute resolution, and other matters

that may reasonably come before the Steens Mountain Advisory Council.

The Steens Mountain Advisory Council meeting is open to the public. Information to be distributed to the Steens Mountain Advisory Council is requested prior to the start of the meeting. Public comment periods will be scheduled for 11 a.m. to 11:30 a.m., local time, both days. The amount of time scheduled for public presentations and meeting times may be extended when the authorized representative considers it necessary to accommodate all persons.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the Steens Mountain Advisory Council may be obtained from Rhonda Karges, Management Support Specialist, Bureau of Land Management Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738. Information can also be obtained by phone at (541) 573–4400, by e-mail at Rhonda_Karges@or.blm.gov, or from the Internet at: *http://www.or.blm.gov/Steens*.

Dated: July 6, 2005.

**Karla Bird,**

*Designated Federal Official, Andrews Resource Area Field Manager.*

[FR Doc. 05–13621 Filed 7–11–05; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID–957–1420–BJ]**

### Idaho: Filing of Plats of Survey

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of filing of plats of surveys.

**SUMMARY:** The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

**SUPPLEMENTARY INFORMATION:** These surveys were executed at the request of the Bureau of Land Management to meet certain administrative and management purposes:

The plat representing the dependent resurvey of portions of the Fifth Standard Parallel North (south boundary) and the subdivisional lines, and the subdivision of section 35, in T. 22 N., R. 23 E., Boise Meridian, Idaho, was accepted April 22, 2005.

The plat representing the dependent resurvey of portions of the south boundary of the Lemhi Indian Reservation, the Fourth Standard Parallel North (south boundary), the west boundary, and of the subdivisional lines, and the subdivision of section 31, in T. 18 N., R. 23 E., Boise Meridian, Idaho, was accepted April 27, 2005.

The plat constituting the entire survey record of the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 8, in T. 7 S., R. 5 E., Boise Meridian, Idaho, was accepted May 4, 2005.

The plat representing the dependent resurvey of portions of the west and north boundaries and subdivisional lines, and the subdivision of sections 6 and 7, in T. 8 S., R. 36 E., Boise Meridian, Idaho, was accepted May 17, 2005.

The plat representing the supplemental plat was prepared to correct certain lotting in section 8, in T. 3 S., R. 35 E., Boise Meridian, Idaho, was accepted June 14, 2005.

These surveys were executed at the request of the Bureau of Land Management to meet certain administrative needs of the National Park Service. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the south boundary, and a portion of the subdivisional lines, and the metes-and-bounds survey of Tracts 37 and 38, in T. 8 S., R. 19 E., Boise Meridian, Idaho, was accepted April 14, 2005.

The plat representing the dependent resurvey of a portion of the subdivision of section 4, and the metes-and-bounds survey of Tracts 37, 38 and 39, and an informative traverse of an easement in section 5, in T. 9 S., R. 19 E., Boise Meridian, Idaho, was accepted April 14, 2005.

These surveys were executed at the request of the Bureau of Land Management to meet certain administrative needs of the Bureau of Indian Affairs. The lands surveyed are:

The plat representing the dependent resurvey of portions of the east boundary, the subdivisional lines and subdivision of sections 24, 25, and 26, and the additional subdivision of sections 24, 25, and 26, in T. 33 N., R. 2 W., Boise Meridian, Idaho, was accepted April 13, 2005.

The plat representing the dependent resurvey of portions of the West Boundary of the Nez Perce Indian Reservation, subdivisional lines, and subdivision of sections 16 and 17, the additional subdivision of section 16, and the metes-and-bounds surveys of certain lines in sections 16 and 17, in T. 35 N., R. 4 W., Boise Meridian, Idaho, was accepted April 29, 2005.

The plat representing the dependent resurvey of portions of the west boundary, subdivisional lines, and the 1889 adjusted meanders of the left bank of the Middle Fork of the Clearwater River, the subdivision of certain sections, the survey of certain lots, and metes-and-bounds surveys in sections 8 and 9, and the meanders of the 1999–2004 left bank of the Middle Fork of the Clearwater River in sections 9 and 10, in T. 32 N., R. 4 E., Boise Meridian, Idaho, was accepted June 2, 2005.

The plat constituting the entire survey record of the survey of a portion of the 2003 meanders of the right bank of the Blackfoot River in section 24 and a portion of the north boundary of the Fort Hall Indian Reservation in section 24, in T. 3 S., R. 34 E., Boise Meridian, Idaho, was accepted June 8, 2005.

The plat representing the dependent resurvey of portions of the south boundary of the Nez Perce Indian Reservation, the subdivisional lines, and the subdivision of sections 9 and 20, and the additional subdivision of sections 9 and 20, in T. 32 N., R. 1 E., Boise Meridian, Idaho, was accepted June 9, 2005.

The plat representing the dependent resurvey of portions of the west boundary, subdivisional lines, subdivision of section 18, and the subdivision of section 8, in T. 44 N., R. 4 W., Boise Meridian, Idaho, was accepted June 16, 2005.

This survey was executed at the request of the Bureau of Land Management to meet certain administrative needs of the Bureau of Reclamation. The lands surveyed are:

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of section 31, and a metes-and-bounds survey in section 31, in T. 8 S., R. 20 E., Boise Meridian, Idaho, was accepted May 24, 2005.

**SUMMARY:** The Bureau of Land Management (BLM) will file the plats of surveys of the lands described below in the BLM Idaho State Office, Boise, Idaho, 30 days from the date of publication in the **Federal Register**.

The plat constituting the entire survey record of the 2003 meanders of an unnamed island, in the Snake River, designated as Tract 38, in section 27, in T. 10 S., R. 23 E., Boise Meridian, was accepted June 8, 2005.

The plat constituting the entire record of survey of the 2004 meanders of an unnamed island, in the Snake River, designated as Tract 37, in sections 25

and 36, in T. 9 S., R. 24 E., Boise Meridian, Idaho, was accepted June 8, 2005.

The plat representing the entire record of survey of the 2003 meanders of two unnamed islands in the Snake River, designated as lot 10 and lot 11, in section 2, in T. 9 S., R. 25 E., Boise Meridian, Idaho, was accepted June 8, 2005.

The plat representing the entire record of survey of the 2003 meanders of an island in the Snake River, locally known as Jackson Bridge Island, designated as Tract 37, in sections 7, 8, and 18, in T. 9 S., R. 25 E., Boise Meridian, Idaho, was accepted June 8, 2005.

The plat representing the entire record of the survey of the 2004 meanders of an unnamed island, in the Snake River, designated as Tract 38, in section 18, in T. 9 S., R. 25 E., Boise Meridian, Idaho, was accepted June 8, 2005.

The plat representing the entire record of the survey of the 2004 meanders of an unnamed island, in the Snake River, designated as lot 7, in section 21, in T. 10 S., R. 24 E., Boise Meridian, Idaho, was accepted June 8, 2005.

Dated: July 5, 2005.

**Stanley G. French,**

*Chief Cadastral Surveyor for Idaho.*

[FR Doc. 05–13620 Filed 7–11–05; 8:45 am]

BILLING CODE 4310–GG–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before June 18, 2005.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 27, 2005.

**John W. Roberts,**

*Acting Chief, National Register/National Historic Landmarks Program.*

**ALASKA**

**Valdez-Cordova Borough-Census Area**

Cape Hinchinbrook Light Station, (Light Stations of the United States MPS), SW corner of Hinchinbrook Island on E side of Hinchinbrook Entrance of Prince William Sound, Cordova, 05000728

**CALIFORNIA**

**Sonoma County**

Condominium 1, 110–128 Sea Walk Dr., The Sea Ranch, 05000731

**COLORADO**

**Denver County**

Crammer House, (Jules Jacques Benois Benedict Architecture in Colorado MPS), 200 Cherry St., Denver, 05000732

Kohn House, (Jules Jacques Benois Benedict Architecture in Colorado MPS), 770 High St., Denver, 05000733

**Weld County**

White-Plumb Farm, 955 39th Ave., Greeley, 05000729

**FLORIDA**

**Brevard County**

Rossetter, James Wadsworth, House, 1328 Houston St., Melbourne, 05000734

**IDAHO**

**Canyon County**

Lockman, Jacob P. House, 23 9th Ave. N, Nampa, 05000735

**MICHIGAN**

**Cheboygan County**

Fourteen Foot Shoal Light Station, (Light Stations of the United States MPS), Northern Lake Huron, 2.2 mi. NE of Cheboygan River mouth, Cheboygan, 05000742

Spectacle Reef Light Station, (Light Stations of the United States MPS), Located in northern Lake Huron, 10.3 mi. NNE of Ninemile Point, Benton Township, 05000744

**Mackinac County**

Martin Reef Light Station, (Light Stations of the United States MPS), Northern Lake Huron, 4.3 mi. S of Cadogan Point, Clark Township, 05000743

**Menominee County**

Menominee Pierhead Light Station, (Light Stations of the United States MPS), Offshore end of Menominee Harbor N pier at mount of Menominee R, Menominee, 05000738

**MICHIGAN**

**Oakland County**

Franklin Historic District (Boundary Increase), Franklin Rd. and adjoining Sts., Franklin, 05000736

**Wayne County**

Cadillac Tower, 65 Cadillac Sq., Detroit, 05000737

**MINNESOTA**

**Hennepin County**

Sears, Roebuck and Company Mail-Order Warehouse and Retail Store, 2929 Chicago Ave. S, Minneapolis, 05000745

**MISSISSIPPI**

**Lawrence County**

Thompson, June and Nora, House, Sutton Rd., New Hebron, 05000739

**Lowndes County**

South Columbus Historic District (Boundary Increase), 1124 Main St., Columbus, 05000741

**Montgomery County**

Immanuel Epsicopal Church, 416 Summit St., Winona, 05000740

**MISSOURI**

**Greene County**

King, J.E., Manufacturing Company, (Springfield, Missouri MPS AD), 1350 St. Louis St., Springfield, 05000751

**NEW YORK**

**Kings County**

15th Street—Prospect Park Subway Station (IND), (New York City Subway System MPS), 15th St./Prospect Park W and SW, Brooklyn, 05000748

Ocean Parkway Station (Dual System BRT), (New York City Subway System MPS), Located above the jct. of Brighton Beach Ave. and Ocean Pkwy, Brooklyn, 05000749

**Tioga County**

Vesper Cliff, Outside Village of Owego, W bank of Owego Creek, off NY 17, Owego, 05000746

**Tompkins County**

Sayville Congregational Church, (Isaac Henry Green, Jr. Suffolk and Nassau Counties, New York MPS), 131 Middle Rd., Sayville, 05000747

**OHIO**

**Delaware County**

Gooding House and Tavern, 7669 Stagers Loop, Orange Township, 05000753

**Franklin County**

Berry, Richard Jr., House, 324 East North Broadway, Columbus, 05000754

**Greene County**

Fairborn Theatre, 34 S. Broad St., Fairborn, 05000755

**Montgomery County**

Deeds Carillon, 1000 Carillon Blvd., Dayton, 05000756

**Ross County**

Gartner Mound and Village Archeological District, Address Restricted, Chillicothe, 05000752

**PENNSYLVANIA**

**Franklin County**

Skinner Tavern, 13361 Upper Strasburg Rd., Letterkenny Township, 05000757

**Northampton County**

McCollum and Post Silk Mill, 368 Madison Ave., Nazareth Borough, 05000758

**Philadelphia County**

Smaltz Building, 315 N. 12th St., Philadelphia, 05000759

**TENNESSEE**

**Cannon County**

Ready-Cates Farm, (Historic Family Farms in Middle Tennessee MPS) 1662 Northcutt Rd., Milton, 05000760

**Davidson County**

First Baptist Church East Nashville, 601 Main St., Nashville, 05000761

**VIRGINIA**

**Appomattox County**

Appomatix River Bridge, VA 24 over Appomattox River, Appomattox, 05000771

**Clarke County**

Clermont, 801 E. Main St., Berryville, 05000767

**Cumberland County**

Oak Hill, 181 Oak Hill Rd., Cumberland, 05000764

Trenton, 751 Oak Hill Rd., Cumberland, 05000765

**Fauquier County**

Dakota, 8134 Springs Rd., Warrenton, 05000768

**Frederick County**

Long Meadow, 1946 Jones Rd., Winchester, 05000769

**Loudoun County**

Spring Hill Farm, 39018 Piggott Bottom Rd., Hamilton, 05000766

**Montgomery County**

Odd Fellows Hall, 203 Gilbert St., Blacksburg, 05000770

**Page County**

Redwell-Isabella Furnace Historic District, Bet. VA 652 and Hawksbill Creek on N side of Luray, Luray, 05000762

**WISCONSIN**

**Milwaukee County**

Greendale Historic District, Roughly bounded by W. Grange Ave. and Catalpa St., Greendale, 05000763

A request for REMOVAL has been made for the following resource:

**MISSISSIPPI**

**Lauderdale County**

Dial House (Meridian MRA) 1003 30th Ave. Meridian, 79003388

[FR Doc. 05–13595 Filed 7–11–05; 8:45 am]

**BILLING CODE 4312–51–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA. The human remains and associated funerary objects were removed from Colusa, Napa, and Solana Counties, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

An assessment of the human remains, and catalog records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Cortina Indian Rancheria of Wintun Indians of California; Grindstone Indian Rancheria of Wintun-Wailaki Indians of California; Paskenta Band of Nomlaki Indians of California; Redding Rancheria, California; Round Valley Indian Tribes of the Round Valley Reservation, California; and Rumsey Indian Rancheria of Wintun Indians of California.

In 1935, human remains representing at least two individuals were removed from the Howells Point site (CA-Col–2) in Colusa County, CA, by Waldo R. Wedel, who donated the human remains to the Phoebe A. Hearst Museum of Anthropology the following year. The Howells Point site is an occupation site and cemetery located 13 miles southwest of Arbuckle, near the Sacramento River, Colusa County, CA. No known individuals were identified. The 366 associated funerary objects are 1 burial wrapping, 1 button, 1 stone fragment, 100 glass beads, 240 clamshell disc beads, 14 olivella shell beads, 8 abalone pendant and pendant fragments, and 1 lot of basketry.

The Howells Point site is dated to the post-European contact period based on the presence of glass beads in the burials.

In 1936, human remains representing at least 47 individuals were removed from the Miller site (site CA-Col–1) in Colusa County, CA, by R.F. Heizer and A.D. Krieger. Mr. Heizer and Mr. Krieger donated the human remains to the Phoebe A. Hearst Museum of Anthropology that same year. The Miller site is an occupation site and cemetery located 12 miles southwest of Arbuckle, on the west bank of the Sacramento River, Colusa County, CA. No known individuals were identified. The 7,993 associated funerary objects are 6,380 clamshell disc beads, 1,519 olivella beads, 1 lot of vegetal matting, 5 organic materials, 1 kinfe fragment, 2 iron nails, 1 antler fragment, 1 obsidian fragment, 5 projectile points, 1 bone object, 22 beads, 3 awls and fragments, 3 pebbles and fragments, and 49 pendants.

The Miller site is dated to the post-European contact period based on the presence of iron nails in the burials.

In 1947, human remains representing at least one individual were removed from the Tulukai site (CA-Nap–39), located on the northern bank of Tulukai Creek, 1 mile south of Napa in Napa County, CA. The human remains were collected by R.F. Heizer and an anthropology class and were acquired by the Phoebe A. Hearst Museum of Anthropology in 1947 by ''university appropriation,'' a term used to indicate that the cultural items came to the museum from a university-sponsored project with funds provided by The Regents of California. Additional items were collected by R.F. Heizer and C.W. Meighan in 1951. No known individual was identified. The 12 associated funerary objects are 3 clamshell disc beads, 7 obsidian fragments, 1 mortar, and 1 faunal bone.

Stylistic characteristics of the associated funerary objects indicate that the burial dates to the Protohistoric period (post-A.D. 1500).

In 1973, cremated human remains representing at least one individual were removed from Suscol Mound Number 1 (CA-Nap–16) in Napa County, CA, during archeological excavations carried out by University of California, Berkeley anthropology field school. Suscol Mound Number 1 is located on the south bank of Suscol Creek, 4 miles southeast of Napa. No known individual was identified. The 501 associated

funerary objects are a mortar (in which the human remains and associated funerary objects were placed), 2 milling stones, 4 lots of charcoal, 1 shell fragment, 1 stone bead, 18 obsidian fragments, 1 bone bead, 1 olivella shell bead, 262 clamshell disc beads and fragments, and 210 beads and fragments of unknown material.

Stylistic characteristics of the associated funerary objects indicate that the burial dates to the Protohistoric period (post-A.D. 1500).

In 1946, human remains representing at least one individual were removed from Cross Slough Mound (CA-Sol–13) located on an island at the confluence of Cross and Nurse Sloughs on the northeastern side of Suisun Bay in Solano County, CA. The human remains and cultural items were collected by the Standard Oil Company and donated to the Phoebe A. Hearst Museum of Anthropology in 1946. No known individual was identified. The one associated funerary object is an obsidian projectile point.

Stylistic characteristics of the associated funerary object indicate that the burial dates to the Protohistoric period (post-A.D. 1500).

Based on burial context and site characteristics, the human remains described above from Colusa, Napa, and Solano Counties are determined to be Native American in origin. The sites date to a relatively late time period, after the migration of Wintun people into the region circa A.D. 700–900. The present-day descendents of the Wintun are the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Cortina Indian Rancheria of Wintun Indians; Grindstone Indian Rancheria of Wintun-Wailaki Indians of California; Paskenta Band of Nomlaki Indians of California; Redding Rancheria, California; Round Valley Indian Tribes of the Round Valley Reservation, California; and Rumsey Indian Rancheria of Wintun Indians of California.

Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least 52 individuals of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 8,873 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Cortina Indian Rancheria of Wintun Indians of California; Grindstone Indian Rancheria of Wintun-Wailaki Indians of California; Paskenta Band of Nomlaki Indians of California; Redding Rancheria, California; Round Valley Indian Tribes of the Round Valley Reservation, California; and Rumsey Indian Rancheria of Wintun Indians of California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA 94720, telephone (510) 642–6096, before August 11, 2005. Repatriation of the human remains and associated funerary objects to the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Cortina Indian Rancheria of Wintun Indians of California; Grindstone Indian Rancheria of Wintun-Wailaki Indians of California; Paskenta Band of Nomlaki Indians of California; Redding Rancheria, California; Round Valley Indian Tribes of the Round Valley Reservation, California; and Rumsey Indian Rancheria of Wintun Indians of California may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology is responsible for notifying the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Cortina Indian Rancheria of Wintun Indians of California; Grindstone Indian Rancheria of Wintun-Wailaki Indians of California; Paskenta Band of Nomlaki Indians of California; Redding Rancheria, California; Round Valley Indian Tribes of the Round Valley Reservation, California; and Rumsey Indian Rancheria of Wintun Indians of California that this notice has been published.

Dated: June 14, 2005

**Sherry Hutt,**

*Manager, National NAGPRA Program*

[FR Doc. 05–13594 Filed 7–11–05; 8:45 am]

**BILLING CODE 4312–50–S**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–532]**

## In the Matter of Certain Automotive Fuel Caps and Components Thereof; Notice of Commission Determination Not to Review an Initial Determination Granting a Motion To Withdraw the Complaint and Terminate the Investigation

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the United States International Trade Commission has determined not to review the administrative law judge's (''ALJ'') initial determination (''ID'') granting Complainant's motion to withdraw the complaint and terminate the above-referenced investigation.

**FOR FURTHER INFORMATION CONTACT:** Michelle Walters, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** This patent-based section 337 investigation was instituted by the Commission based on a complaint filed by Stant Manufacturing, Inc. of Connersville, Indiana (''Stant''). *See* 70 FR 12239 (March 11, 2005). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale in the United States after importation of certain automotive fuel caps and components thereof by reason of infringement of United States Patent Nos. 5,449,086, 5,794,806, 5,480,055, and 4,678,097. The complaint named five respondents, including Gerdes GmbH, of Germany, Gerdes BVBA, or Belgium, Theodor Gerdes, Ralf Gerdes,

and Monika Gerdes, all of Germany (collectively, ''Gerdes'').

On May 16, 2005, Stant filed a motion to terminate the investigation based on withdrawal of its complaint. Gerdes opposed Stant's motion for termination and further requested that, pursuant to rule 210.25(a)(2), the ALJ *sua sponte* impose sanctions on Stant for abuse of Commission process. The Commission's Investigative Attorney (''IA''), however, supported Stant's motion to terminate.

The ALJ granted Stant's motion to terminate the investigation based on withdrawal of the complaint on June 10, 2005, but declined to impose sanctions on Stant (ID, Order No. 10). Gerdes filed a Petition for Review of the ID on June 17, 2005. Stant filed a response to Gerdes's petition on June 24, 2005, and the IA filed a response on June 23, 2005.

Having considered the ALJ's rationale and the arguments made by the Parties, the Commission has determined not to review the ALJ's ID granting Complainant's motion to terminate the investigation on the basis of withdrawal of the complaint. Accordingly, the above-referenced investigation is hereby terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42 to 210.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–210.46).

Issued: July 7, 2005.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 05–13611 Filed 7–11–05; 8:45 am]

**BILLING CODE 7020–02–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Public Comment and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comment received on the proposed Final Judgment in *United States* v. *Bluefield Regional Medical Center, Inc. and Princeton Community Hospital Association, Inc.,* Civil Case No. 1:05–0234 (DAF), which was filed in the United States District Court for the Southern District of West Virginia, together with the United State's response to the comment, on June 30, 2005.

Copies of the comment and the response are available for inspection at the Department of Justice, Antitrust Division, 125 Seventh Street, NW., Room 200, Washington, DC 20530, (telephone (202) 514–2481), and at the Office of the Clerk of the United States District Court for the Southern District of West Virginia, 601 Federal Street, Room 2303, Bluefield, West Virginia 24701. Copies of any of these materials may be obtained upon request and payment of a copying fee.

**J. Robert Kramer II,**

*Director of Operations, Antitrust Division.*

United States District Court, for the Southern District of West Virginia, Bluefield Division.

United States of America, Plaintiff, Bluefield Regional Medical Center, Inc., and Princeton Community Hospital Association, Inc., Defendants.

Civil Action No. 1.05–0234.

### Response to Competitive Impact Statement on Behalf of the West Virginia Health Care Authority

The West Virginia Health Care Authority (hereinafter ''Authority'') files this response to the Competitive Impact Statement published on April 7, 2005. The purpose of this response is to set forth the Authority's analysis of the state action doctrine and to clarify the statutory powers conferred upon the Authority by the West Virginia Legislature.

### I. Statement of Facts

*A. History of Bluefield Regional Medical Center and Princeton Community Hospital*

Bluefield Regional Medical Center (hereinafter ''BRMC'') owns and operates a 265 bed acute care not-for-profit hospital in Bluefield, West Virginia. Princeton Community Hospital (hereinafter ''PCH'') owns and operates a 211 bed acute care not-for-profit hospital in Princeton, West Virginia. In addition to the Princeton facility, PCH also owns and operates St. Luke's Hospital, LLC, a 79 bed acute care hospital in Bluefield, West Virginia.

BRMC and PCH are located in close proximity to one another in Mercer County, Southern West Virginia. Mercer County ranks 15 out of 55 counties for the percentage of non-elderly adults without health insurance in the State of West Virginia.[1] Thus, a significant portion of the population of this county is rural and uninsured.

[1] Health Insurance in West Virginia: The Non-elderly Adult Report, July 2002 and reprinted May 2003 available at *http://www.wvhealthpolicy.org/reports_2002.htm.*

*B. Overview of the West Virginia Health Care Authority, Its Cost Based Rate Review System and the Certificate of Need Program*

By way of background, the Health Care Cost Review Authority (hereinafter ''HCCRA'') was created by the Legislature in 1983, as an autonomous agency within state government, W.Va. Code § 16–29B–5. The Authority, then known as HCCRA, is charged with the responsibility for collecting information on health care costs, developing a system of cost control, and ensuring accessibility to appropriate acute care beds. W.Va. Code § 16–29B–1, *et seq.*

This same legislation expanded the HCCRA's responsibilities to include the administration of two previously enacted cost containment programs: (1) the Certificate of Need (hereinafter ''CON'') program, which is codified at W.Va. Code §§ 16–2D–1, *et seq.;* and (2) the Health Care Financial Disclosure Act, which is codified at W.Va. Code §§ 16–5F–1, *et seq.* In 1997, the Legislature enacted a statute renaming the HCCRA as the West Virginia Health Care Authority. W.Va. Code § 16–29B–2.

The Authority's purpose is ''to protect the health and well-being of the citizens of this state by guarding against unreasonable loss of economic resources as well as to ensure the continuation of appropriate access to cost-effective quality health care services.'' W.Va. Code § 16–29B–1. This statute created a three member Board vested with the power to ''approve or disapprove hospital rates * * *.'' W.Va. Code §§ 16–29B–5 & 19.

The Authority establishes hospital rates for a group of payors termed ''nongovernmental payors'' or ''other payors.'' This group includes public and private insurers, persons who pay for their own hospital services and all other third party payors who are not government-related. W.Va. Code §§ 16–29B–1, *et seq.*; Hospital Cost Based Rate Review System, 65 C.S.R. §§ 5–1, *et seq.*

The Authority is also statutorily responsible for establishing the nongovernmental average charge per discharge for inpatient and outpatient services for acute care hospitals in the state. Accordingly, once a year, hospitals may file a rate application with the Authority seeking a rate increase pursuant to W.Va. Code § 16–29B–21. Ultimately, the Authority has the right to: (1) Approve a rate request, (2) modify a rate request, or (3) deny a rate request. W.Va. Code § 16–29B–19.

In evaluating rate applications, the Authority utilizes a hospital's rate application as the primary source of information in setting its rates. The

Authority also utilizes other documents on file with the Authority as additional sources of data, such as audited financial statements, Uniform Reporting System Financial Reports, Medicare Cost Reports, the hospital's trial balance and the Uniform Billing (hereinafter ''UB'') UB–92 discharge bills. The Authority then compares the rate application to the audited financial statements, the Uniform Financial Report and the Medicare Cost Report in order to determine whether the information in the rate application is consistent, in all material aspects, with the other filings. The UB–92 information is used to compare discharges and case mix indices. The case mix for each hospital is determined from diagnostic related groups (hereinafter ''DRG'') weights in effect during the hospital's fiscal year.

The Authority establishes several limits during the rate setting process and a hospital is expected to monitor each of these limits to ensure that it is in compliance with the Authority's established rates. W.Va. C.S.R. § 65–5–10.2. If a hospital exceeds its approved rates, then it has an overage. This overage may be justified through case mix, outliers, new service or other events which could not have reasonably been foreseen. W.Va. C.S.R, §§ 65–5–10.3–10.3.4. If any portion of the overage is not justified, then the hospital has an unjustified overage and is subject to penalties in subsequent years.

With respect to the CON program, the Authority's Board has been empowered by the Legislature to enact legislative rules, to develop the State Health Plan and to consider CON applications. W.Va. Code §§ 16–2D–3(b)(5); 16–2D–5. The law requires that a hospital obtain a CON prior to developing cardiac surgery or radiation therapy services.

With respect to the State Health Plan Cardiac Surgery Standards, the Authority has exhibited a preference for joint applicants seeking to provide cardiac surgery services. The Authority encouraged parties to work together to ensure that services were not duplicated in the various geographic areas in order to ensure the development of a quality open heart program. Several studies have shown a direct correlation between high volume programs and success rates. Therefore, the Authority determined that joint applications would produce greater volumes and therefore provide greater quality of service.

*C. CON Applications Filed by BRMC for the Development of Cardiac Surgery Services and PCH for the Development of a Comprehensive Cancer Center*

In 1999, BRMC submitted an application to offer cardiac surgery services. While a need appeared to exist in the area, the Authority denied this request because BRMC was not able to show that it would be able to attract a sufficient number of patients without working with other area hospitals, namely PCH. On January 23, 2003, BRMC, Charleston Area Medical Center, and PCH submitted a joint application for a CON to establish cardiac surgery services to be located at BRMC. This application was initially contested by Richard Lindsay, M.D., the West Virginia Consumer Advocate (hereinafter ''WVCA''), and the West Virginia Public Employees Insurance Agency (hereinafter ''WVPEIA''). WVCA and WVPEIA subsequently withdrew their requests for hearing and the Authority found that Richard D. Lindsay did not qualify as an affected party. On August 1, 2003, the applicants were granted a CON.

On July 15, 2003, PCH and BRMC filed a letter of intent to develop a freestanding Community Hospital Comprehensive Cancer Center facility to be located at PCH. PCH proposed acquiring existing radiation therapy equipment from BRMC and submitted a CON application on July 30, 2003. Several parties requested affected party status and requested that a hearing be conducted with respect to this application. This matter was scheduled for hearing and ultimately cancelled. To date, the matter has never been heard and is still on hold.

*D. BRMC and PCH Entered Into Agreements Regarding Their CON Applications Which Were Subsequently Investigated by the Department of Justice*

The Department of Justice (hereinafter ''DOJ'') sent letters to BRMC and PCH inquiring about agreements the hospitals entered into on January 30, 2003 (hereinafter called ''cardiac surgery and cancer center agreements''). The agreements applied to PCH's provision of certain cancer center services and the cardiac surgery agreement concerned BRMC's plan to establish and offer cardiac surgery services. The term of the agreements was for five years after the first cardiac surgery is performed at BRMC or the first cancer patient is treated at PCH, whichever is later. By their terms, the cardiac surgery and cancer center agreements applied to the following West Virginia counties: McDowell, Mercer, Monroe, Raleigh, Summers and Wyoming; and the following Virginia counties: Bland, Giles, and Tazwell.

The DOJ contends that the cardiac surgery and cancer center agreements violate Section 1 of the Sherman Act, 15 U.S.C. 1 and ''have the effect of unreasonably restraining competition and allocating markets for cancer and cardiac surgery services to the detriment of consumers.'' (Complaint filed by DOJ on March 21, 2005 at ¶ 1.) The DOJ requested the following relief in its complaint: that the Court declare the cardiac surgery and cancer center agreements violate Section 1 of the Sherman Act, 15 U.S.C. 1 and that the Court enjoin the defendants from enforcing the agreements and to further prohibit the parties from entering into additional agreements to allocate cancer or cardiac surgery services. (Complaint at ¶ 30.)

**II. ANALYSIS OF LAW**

*A. Applicable Law*

The United States Supreme Court case *Parker* v. *Brown*, 317 U.S. 341 (1943), serves as the legal foundation of the state action antitrust defense. This ''state action doctrine'' immunizes anticompetitve acts if taken pursuant to state policy. The Court later refined this doctrine in a series of cases.

For example, in *California Retail Liquor Dealers Ass'n* v. *Midcal Aluminum Inc.,* 445 U.S. 97 (1980) the United States Supreme Court articulated two criteria to be established before a party may qualify for immunity under the state action doctrine. First, there must be a clear articulation of the state policy in question. Second, the Court determined that the action in question must be actively supervised by the state.

With respect to the clear articulation prong, the Court held that a private party seeking Sherman Act immunity under the state action doctrine need not point to a specific detailed legislative authorization for its challenged conduct as long as the state clearly intends to displace competition in a particular field. *Southern Motor Carriers Rate Conference, Inc.* v. *United States,* 471 U.S. 48, 64 (1985). With respect to the active supervision prong, the Court has indicated that the state's supervision cannot be minimal. *Patrick* v. *Burget* 486 U.S. 94 (1988). Rather, the state officials must exercise ultimate control over the challenged anticompetitive conduct. *Id* at 101.

*B. Application of Existing Law to BRMC and PCH*

Courts have liberally applied the state action doctrine over the years.[2] This has caused both the FTC and DOJ to challenge the applicability of the state action doctrine. For example, in September 2003, the FTC issued a report analyzing the applicability of the state action doctrine.[3] This report concluded that ''overly broad interpretations of the state action doctrine could potentially impede national competition policy goals.'' *Id* at p. 2. Recently, the DOJ and FTC issued a report which criticized state CON programs as promoting anticompetitive markets.[4]

Based upon comments contained in the Competitive Impact Statement, it appears that the DOJ has attempted to re-define the criteria for determining when the state action doctrine applies. However, this Competitive Impact Statement does not negate approximately fifty years of United States Supreme Court precedent. Existing law clearly provides that the actions of BRMC and PCH should qualify for immunity under the state action doctrine.

With respect to the clear articulation prong of the two part test, the Authority was clearly created to control health care costs and to prevent the unnecessary duplication of services. W.Va Code § 16–29B–1. At their core, all CON programs control the development of services, or the health care market, in order to keep costs down.[5] This is especially important in West Virginia, which has a high rate of uninsured individuals who already face difficulties in accessing health care.

Therefore, the Authority controls the health care market by regulating entry into the market through its laws and regulations. W.Va. 16–2D–1, *et seq.*; 65 C.S.R. 7. For example, in order to be approved for a CON, the service must be needed and consistent with the State Health Plan. W.Va. Code § 16–2D–9(b); *Princeton Community Hospital* v. *State Health Planning and Development Agency*, 328 S.E.2d 164 (W.Va. 1985). In order to demonstrate the need for a service, a party often must conduct an analysis of the level of services being offered by existing providers and project the amount of services that will be needed in the future. If existing providers are not serving the population, then an unmet need exists. At a fundamental level this controls the market and allows only those providers that can establish need to enter the market. Thus, the West Virginia health care market is regulated and growth is controlled.

In addition, the Authority has determined that in order to have a high volume, quality cardiac surgery project in Southern West Virginia, hospitals must coordinate their efforts. In the newly revised State Health Plan cardiac Surgery Standards, the Authority gave preference to joint applicants in this geographic area. BRMC and PCH filed a joint application for the development of cardiac surgery services which was ultimately approved. Previously, an individual application filed by BRMC was denied. The recently newly approved joint application will allow residents in Southern West Virginia to benefit from a quality program in close proximity to their homes.

With respect to the active supervision prong, the Authority clearly has on-going supervision of West Virginia acute care hospitals. For example, the Authority establishes, on a yearly basis, the average charge per nongovernmental discharge that all acute care hospitals in the state may charge. The Authority has the power to impose significant penalties on those hospitals that do not comply with the Authority's established rates. The Authority has the power to collect financial disclosure from all covered entities, which includes acute care hospitals, in West Virginia on a yearly basis. In addition, the Authority has the right to approve or deny a CON for new institutional health services. The Authority's CON powers are very broad. Even after the CON is issued, parties must submit progress reports and request substantial compliance before a file may be closed. Further, the Authority retains oversight of a CON for at least three years after it is issued. In this regulatory environment, oversight clearly does exist.

Rather than contend with the total picture, the DOJ narrowed its focus to only the written cardiac surgery and cancer center agreements. Although the Authority does not have standing to enforce the actual agreements, these agreements served as the basis for the CON applications submitted and filed by both parties. The Authority certainly has the power to regulate the CON process as well as oversee the hospital's rates.

**III. Conclusion**

The Authority realizes that both PCH and BRMC have decided to enter into a consent decree to resolve the DOJ's investigation. The Authority's purpose in filing these comments is not to prevent this judgment from being entered, but rather is to clarify its statutory powers and set forth its opinion regarding the state action doctrine.

United States of America, Plaintiff, v. Bluefield Regional Medical Center, Inc., and Princeton Community Hospital Association, Inc., Defendants.

Civil Action No. 1:05–CV–00234.

**Plaintiff United States Response to Public Comment**

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (''APPA'' or ''Tunney Act''), the United States hereby responds to the one public comment received regarding the proposed Final Judgment in this case. After careful consideration of the comment, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comment and this Response have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

On March 21, 2005, the United States filed a Complaint alleging that Bluefield Regional Medical Center, Inc., (BRMC) and Princeton Community Hospital Association, Inc., (PCH) violated section 1 of the Sherman Act (15 U.S.C. 1) by entering into two agreements on January 30, 2003, in which BRMC agreed not to offer many cancer services and PCH agreed not to offer cardiac-surgery services. At the same time the Complaint was filed, the United States also filed a proposed Final Judgment and a Stipulation signed by the United States and defendants consenting to the entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act. Pursuant to those requirements, the United States filed a Competitive Impact Statement (''CIS'') with this Court on March 21, 2005; published the proposed Final Judgment, Stipulation, and CIS in the **Federal Register** on April 4, 2005, *see* 70 FR 17117 (2005); and published a summary of the terms of the proposed Final Judgments and CIS, together with directions for the submission of written

[2] *See e.g., Askew* v. *DCH Regional Healthcare Authority*, 995 F.2d 1033 (11th Cir. 1994) and *FTC* v. *Hospital Board of Directors of Lee County*, 38 F.3d 1184 (11th Cir. 1994).

[3] Report of the State Action Task Force (Sept. 2003) available at *http://www.ftc.gov/OS/2003/09/stateactionreport.pdf.*

[4] Improving Health Care: A Dose of Competition, (July, 2004) available at *http://www.ftc.gov/reports/healthcare/040723healthcarept.pdf.*

[5] W.Va. Code § 16–29B–26 provides state antitrust immunity for the actions of health care providers under the Authority's jurisdiction, when such actions are made in compliance with orders, directives, rules or regulations issued or promulgated by the Authority's Board.

comments relating to the proposed Final Judgment, in the Washington Post for seven days beginning on April 1, 2005 and continuing on consecutive days through April 7, 2005, and the Charleston Gazette, a newspaper of general circulation in the Southern District of West Virginia, beginning on April 4, 2005 and continuing on consecutive days through April 9, 2005, and on April 11, 2005. The 60-day period for public comments ended on June 5, 2005, and the United States received one comment as described below and attached hereto.

## I. Background

As explained more fully in the Complaint and CIS, the defendants' cancer and open-heart agreements effectively allocated markets for cancer and cardiac-surgery services and restrained competition to the detriment of consumers in violation of section 1 of the Sherman Act. The proposed Final Judgment will restore competition by annulling the BRMC–PCH agreements and prohibiting BRMC and PCH from taking actions that would reduce competition between the two hospitals for patients needing cancer and cardiac-surgery services. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

## II. Legal Standard Governing the Court's Public Interest Determination

Upon the publication of the public comment and this Response, the United States will have fully complied with the Tunney Act and will move the Court for entry of the proposed Final Judgment as being ''in the public interest.'' [1] The Court, in making its public interest determination, shall consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.[2]

As the U.S. Court of Appeals for the District of Columbia Circuit has held, the Tunney Act permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the proposed Final Judgment may positively harm third parties.[3]

With respect to the adequacy of the relief secured by the proposed Final Judgment, courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4]

''[A] decree must be approved even if it falls short of the remedy the court would impose onits own, as long as it falls within the range of acceptability or is 'witnin the reaches of public interest.' '' [5] Furthermore,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest funding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[6]

## III. Summary of Public Comments and the United States' Response

During the 60-day public comment period, the United States received one comment, from the West Virginia Health Care Authority (WVHCA), which is attached hereto. The WVHCA, among other duties, is responsible for administering West Virginia's certificate of need (''CON'') program and establishing hospital rates for non-governmental payors, such as private insurers, in West Virginia.

The WVHCA does not seek to prevent entry of the proposed Final Judgment. Rather, the WVHCA states that its purpose is to ''set forth the Authority's analysis of the state action doctrine and to clarify the statutory powers conferred upon the Authroity by the West Virginia Legislature.'' (WVHCA Comment, p. 1). The state-action doctrine provides immunity from federal antitrust library when a defendant has satisfied a two-part test by first showing that the challenged restraint is one clearly articulated and affirmatively expressed as state policy and then showing that the restraint is actively supervised by the state.[7] The WVHCA believes that the defendants' actions qualify for immunity under the state-action doctrine. (WVHCA Comment, p. 8).

As an initial matter, the Court need not rule on whether the state-action doctrine provides federal antitrust immunity to the challenged agreements. The Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint. The Tunney Act does not authorize the Court to construct a ''hypothetical case adn then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Indeed, the WVHCA does not argue that the proposed Final Judgment is not ''within the reaches of public interest'' or that the remedy secured does not fit the violations alleged. Nor does the WVHCA assert that any public or private interest would be harmed by the entry of the judgment, or that the judgment inadequately or improperly preserves the role of competition in the relevant markets within the regulatory framework established by the Commonwealth of

[1] 15 U.S.C. 16(e).

[2] 15 U.S.C. 16(e)(1).

[3] *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

[4] *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981) (emphasis added) (citations omitted). *Cf. United States* v. *BNS Inc.*, 858 F.2d 456, 464 (9th Cir. 1988) (holding that the court's ''ultimate authority under the [Tunney Act] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); *see generally Microsoft*, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

[5] *United States* v. *AT&T Corp.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted)(quoting *Gillette,* 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent judgment even though the court would have imposed a greater remedy).

[6] *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at ¶ 71,980 (W.D. Mo. 1977).

[7] *California Retail Liquor Dealers Ass'n* v. *Midcal Aluminum,* 445 U.S. 97, 105 (1980).

West Virginia.[8] In short, the WVHCA has provided no argument against entry of the proposed Final Judgment and does not object to its entry. Consequently, the WVHCA's comment does not support disapproving the proposed Final Judgment.

Even if the Court were to consider the applicability of the state action doctrine, the WVHCA's comment does not demonstrate that the doctrine should apply in this case. With regard to the first part of the state-action test, the comment discusses the WVHCA's powers over West Virginia's CON program. (WVHCA Comment, pp. 8–10). But the comment does not discuss whether those powers allow the WVHCA to authorize market-allocation agreements between private parties such as the ones challenged in the Complaint. In fact, the WVHCA's CON powers do not allow it to authorize such agreements.[9] Rather the West Virginia legislature empowered the WVHCA to administer West Virginia's CON program only according to legislatively established procedures, consisting principally of granting or denying CONs to firms wishing to compete.[10] Because the West Virginia legislature did not empower the WVHCA to authorize private market-allocation agreements, the defendants' cancer and open-heart agreements do not qualify for state-action immunity.

With regard to the second part of the state-action test, the comment states that the WVHCA ''clearly has on-going supervision of West Virginia acute care hospitals'' through West Virginia's CON program and regulation of hospital rates for non-governmental payors. (WVHCA Comment, p. 10). However, the active-supervision requirement of the state-action doctrine requires that the State actively supervise and exercise ultimate control over the challenged anticompetitive conduct.[11] So the relevant question for determining whether state-action immunity exists is not whether the WVHCA actively supervises some aspects of hospital regulation in West Virginia, but whether the WVHCA is empowered to supervise and has actively supervised the defendants' agreements.

The WVHCA does not have such powers and has not actively supervised the defendants' agreements. The West Virginia legislature has not empowered the WVHCA to require parties to private agreements to maintain, alter, or abandon their agreements. Thus, the WVHCA has no power to exercise active supervision or control over private agreements such as the cancer and open-heart agreements. Moreover, the WVHCA has not purported to actively supervise the cancer and open-heart agreements, as it did not (1) develop a factual record concerning the initial or ongoing nature and effect of the agreements, (2) issue a written decision approving the agreements, or (3) assess whether the agreements further criteria established by the West Virginia legislatures.[12]

The WVHCA's rate-regulation responsibilities do not satisfy the active-supervision requirement because the challenged anticompetitive conduct in this matter is not the prices charged by the hospitals to non-governmental payors, but rather the terms of the cancer and open-heart agreements. the WVHCA's rice regulation activities do not directly address market-allocation issues or the potential anticompetitive effects of such allocations as rate regulation may fail to ensure that the hospitals charge rates equal to those rates that would have prevailed in a competitive market and fails to address decreases in quality of service, innovation, and consumer choice that result from an agreement not to compete.

The WVHCA comment also does not address the fact that the defendants' agreements allocated markets for cancer and cardiac surgery in the three Virginia counties. As the WVHCA is not vested with any power concerning matters in the Commonwealth of Virginia, the powers and actions of the WVHCA cannot create state-action immunity for an agreement not to complete in Virginia.

## IV. Conclusion

After careful consideration of the WVHCA comment, the United States still concludes that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is, therefore, in the public interest. Pursuant to Section 16(d) of the Tunney Act, the United States is submitting the public comments and its Response to the **Federal Register** for publication. After the comments and its Response are published in the **Federal Register**, the United States will move this court to enter the proposed Final Judgment.

Dated: June ____, 2005

Respectfully submitted,

For Plaintiff United States:
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[FR Doc. 05–13533 Filed 7–11–05; 8:45 am]

**BILLING CODE 4410–11–M**

[8] The question of state-action immunity may not properly be before the Court. State-action immunity is essentially an affirmative defense with the party claiming state-action immunity bearing the burden of proof in establishing the defense. *Ticor Title,* 504 U.S. at 625; *town of Hallie* v. *City of Eau Claire,* 471 U.S. 34, 37–39 (1985); *Yeager's Fuel* v. *Pennsylvania Power & Light,* 22 F.3d 1260, 1267 (3d Cir. 1994); *Nugget Hydroelectric, L.P.* v. *Pacific Gas & Elec. Co.,* 981 F.2d 429, 434 (9th Cir. 1992). In the present matter, the defendants have chosen not to assert a state-action defense but instead to stipulate that the Court may enter the proposed Final Judgement.

[9] *See* W. Va. Code § 16–2D–1 *et seq.*, W. Va. Code St. R. § 65–7–1 *et seq.,* W. Va. Code § 16–29b–1 *et seq.*

[10] W. Va. Code § 16–2D–1 *et seq.*, W. Va. Code St. R. § 65–7–1 *et seq.*, W. Va. Code § 16–29B–1 *et seq. See also* CIS, pp. 8–10.

[11] *Midcal*, 445 U.S. at 105, *Patrick* v. *Burget*, 486 U.S. 94, 100–101 (1988).

[12] *See FTC* v. *Ticor Title Ins. Co.*, 504 U.S. 621, 637–639 (1992).

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 70 FR 19508 and one comment was received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

**DATES:** Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

**ADDRESSES:** Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of

NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**SUPPLEMENTARY INFORMATION:**

*Comment:* On April 13, 2005, we published in the **Federal Register** (70 FR 19508) a 60-day notice of our intent to request renewal of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending June 13, 2005. One comment was received from the public notice. The comment came from B. Sachau of Floram Park, NJ, via e-mail on April 18, 2005. Ms. Sachau objected to the Fellowships program, but had no specific suggestions for altering the data collection.

*Response:* NSF believes that because the comment does not pertain to the collection of information or the required forms for which NSF is seeking OMB approval, NSF is proceeding with the clearance request.

*Title of Collection:* Fellowship Applications and Award Forms.

*OMB Approval Number:* 3145–0023.

*Type of Request:* Intent to seek approval to extend without revision an information collection for three years.

*Abstract:* Section 10 of the National Science Foundation Act of 1950 (42 U.S.C. 1861 *et seq.*), as amended, states that ''The Foundation is authorized to award, within the limits of funds made available * * * scholarships and graduate fellowships for scientific study or scientific work in the mathematical physical, medical, biological, engineering, social, and other sciences at appropriate nonprofit American or nonprofit foreign institutions selected by the recipient of such aid, for stated periods of time.''

The Foundation Fellowship Programs are designed to meet the following objectives:

- To assure that some of the Nation's most talented students in the sciences obtain the education necessary to become creative and productive scientific researchers.
- To train or upgrade advanced scientific personnel to enhance their abilities as teachers and researchers.
- To promote graduate education in the sciences, mathematics, and engineering at institutions that have traditionally served ethnic minorities.
- To encourage pursuit of advanced science degrees by students who are members of ethnic groups traditionally under-represented in the Nation's advanced science personnel pool.

The list of fellowship award programs sponsored by the Foundation may be found via FastLane through the NSF Web site: *http://www.fastlane.nsf.gov.*

*Estimate of Burden:* These are annual award programs with application deadlines varying according to the fellowship program. Public burden may also vary according to program, however it is estimated that each submission is averaged to be 12 hours per respondent.

*Respondents:* Individuals.

*Estimated Number of Responses:* 5,000.

*Estimated Total Annual Burden on Respondents:* 60,000 hours.

*Frequency of Responses:* Annually.

Dated: July 7, 2005.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 05–13689 Filed 7–11–05; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–17]**

## Portland General Electric Company; Trojan Independent Spent Fuel Storage Installation; Notice of Docketing of Materials License No. SNM–2509; Amendment Application

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** License amendment.

**FOR FURTHER INFORMATION CONTACT:** Jill S. Caverly, Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–6699; fax number: (301) 415–8555; e-mail: *jsc1@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

By letter dated May 23, 2005, Portland General Electric Company (PGEC) submitted an application to the U.S. Nuclear Regulatory Commission (NRC or Commission), in accordance with Title 10 of the Code of Federal Regulations (10 CFR) 72.48(c)(2) and 10 CFR 72.56, requesting an amendment of the Trojan Independent Spent Fuel Storage Installation (ISFSI) license for the ISFSI located in Columbia County, Oregon. PGEC proposes to revise the designated controlled area at the ISFSI such that the boundary would be moved from 300 meters from the edge of the storage pad to 200 meters from the edge of the storage pad.

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–17. Upon approval of the Commission, the Trojan ISFSI License, No. SNM–2509, Safety Analysis would be amended to allow this action.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) regarding the proposed amendment or, if a determination is made that the proposed amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the proposed amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this amendment, see the application dated May 23, 2005, which is publically available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated in Rockville, Maryland, this 30th day of June, 2005.

For the Nuclear Regulatory Commission.

**Jill S. Caverly,**

*Project Manager, Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E5–3681 Filed 7–11–05; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–260 and 50–296]**

## Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 2 and 3; Notice of Consideration of Issuance of Amendments to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of amendments to Facility Operating Licenses No. DPR–52 and DPR–68, issued to Tennessee Valley Authority (the licensees), for operation of the Browns Ferry Nuclear Plant (BFN) Units 2 and 3 located in Limestone County, Alabama.

The proposed amendments would change the BFN, Units 2 and 3 operating licenses to increase the maximum authorized power level from 3458 megawatts thermal (MWt) to 3952 MWt. This change represents an increase of approximately 15 percent above the current maximum authorized power level. The proposed amendments would also change the BFN, Units 2 and 3 licensing bases and any associated technical specifications for containment overpressure.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult current copies of 10 CFR 2.309, 2.304, and 2.305, which are available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing and petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated in the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

Nontimely requests and petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(l)–(viii).

A request for a hearing and petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, or expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A request for hearing and petition for leave to intervene need not comply with 10 CFR 2.304(b), (c) and (d) if an original and two copies otherwise complying with the requirements of that section are mailed within two (2) days after filing by e-mail or facsimile transmission to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to General Counsel, Tennessee Valley Authority, ET 11A, 400 West

Summit Hill Drive, Knoxville, Tennessee, 37902, attorney for the licensee.

For further details with respect to this action, see the application for amendments dated June 25, 2004, and supplements dated February 23 and April 25, 2005, which are available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 1st day of July, 2005.

For the Nuclear Regulatory Commission.

**Eva A. Brown,**

*Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. E5–3680 Filed 7–11–05; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–09015]**

## Environmental Assessment and Finding of No Significant Impact Related to Incorporating the Decommissioning Plan for the Michigan Department of Natural Resources (Mdnr) Bay City, MI, Tobico Marsh Site Into the License

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Environmental Assessment and Finding of No Significant Impact.

**FOR FURTHER INFORMATION CONTACT:** David Nelson, Project Manager, Materials Decommissioning Section, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7E18, Washington, DC 20555. Telephone: 301–415–6626; fax number: 301–415–5397; e-mail: *dwn@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuing a license amendment to Material License No. SUC–1581 issued to the Michigan Department of Natural Resources (MDNR), to incorporate the Tobico Marsh State Game Area Decommissioning Plan (DP) for the MDNR, Bay City, Michigan, Tobico Marsh site into the License. SUC–1581 was issued in 1999 authorizing MDNR to possess on-site radioactive materials related to the decommissioning of the MDNR Tobico Marsh site. In a letter dated April 2, 2003, MDNR requested that the Tobico Marsh State Game Area DP be incorporated into the licensee. On January 30, 2004, MDNR submitted a revised DP (Revision 1) and in a letter dated December 20, 2004, MDNR proposed additional changes to Revision 1. The license will be amended to include all of the revisions and changes described in the January 30, 2004, and December 20, 2004, letters.

If the NRC approves the amendment, the DP will be incorporated into the MDNR License. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Part 10 of the Code of Federal Regulations (10 CFR) Part 51. Based on the EA, the NRC has determined that a Finding of No Significant Impact (FONSI) is appropriate.

### II. Environmental Assessment

*Background*

The site is a small part of the former (now closed) industrial waste disposal area locally known as the Hartley & Hartley Landfill. The industrial waste disposal facility, which opened in the mid-1950's, was originally operated by the Hartley family and is estimated to have received 18,000 barrels of spent solvents, oils, and other liquid and solid wastes for disposal during the 1960's and early 1970's. Foundry waste containing low levels of naturally occurring radioactivity in the form of magnesium-thorium slag was also disposed of at the site beginning in 1970. By 1973, disposal activities on site had ceased.

Currently, the Hartley & Hartley Landfill industrial disposal site is treated as two separate sites (the MDNR site and the SC Holdings, Inc site) after having been subdivided. In a formal land exchange concluded in 1973, the Hartleys conveyed land to the State of Michigan that included approximately three acres where waste disposal had previously occurred in return for lands bordering their industrial waste site. The 3-acre portion, now known as the MDNR site, is part of the State of Michigan property which is known as the Tobico Marsh State Game Area.

The 3-acre portion was an area where the Hartley's mined (excavated) a former beach-ridge sand deposit. The excavation resulted in surface depressions flooded with surface water and near-surface ground water. Industrial wastes, including drums, spent solvents, oils and other liquid and solid wastes were disposed of in the excavations. In addition to these materials, magnesium-thorium slag containing naturally occurring thorium (Th) was also disposed of in the excavations beginning in 1970. The slag, thought to have been generated by Wellman Dynamics at a site within Bay City, Michigan, was a byproduct of casting and foundry operations involving magnesium-thorium alloys.

In 1984, to contain the chemical wastes and preclude the potential migration of chemical (non-radioactive) contaminants beyond those areas already impacted by the disposal, a bentonite slurry wall was placed around the disposal area and covered with a 1.5 m (5 ft) thick clay cap. The slurry walls and cap formed a cell which contained the chemical wastes, as well as the slag containing magnesium-thorium alloys.

A small building and adjacent concrete pad, which are still in place, were constructed on-site after the slurry walls and clay cover were installed. A leachate collection and treatment system (LCTS) was installed within the cell and slurry walls. The small building was designed to house the LCTS controls. The building has been used to stage survey equipment and temporarily store potentially radiologically contaminated waste generated during previous on-site surveying activities. The LCTS was designed by the Michigan Department of Environmental Quality (MDEQ) to withdraw liquid non-radiological contaminants (leachate) from the waste cell to prevent hydrostatic pressure in the cell from building to a point that chemical contaminants would leak from the cell. In the past, there was no noticeable buildup of pressure within the cell. The LCTS was never operated and, MDNR believes that liquid levels within the cell will not build to the point where operation of the LCTS is needed.

The primary radioactive source term within the cell is comprised of pockets of vitreous, thorium-bearing slag that lie in a lens that is approximately 5 to 6 feet below the ground surface. A clay cover (approximately 5 feet thick at the center of the cell) overlays the ground surface. On August 26, 1999, the NRC

issued Source Material License No. SUC–1581 to MDNR authorizing possession of the thorium-bearing slag and decommissioning of the site. Prior to 1999, the site had never been licensed.

On April 2, 2003, MDNR submitted a DP for the site. The DP outlined decommissioning activities including the removal of the building, the adjacent concrete pad and the above-grade components of the LCTS. Following those activities, the site would be released for unrestricted use as specified in 10 CFR 20.1402 and the radioactive materials license would be terminated. The NRC staff determined that the submittal was incomplete, and on January 30, 2004, MDNR submitted a revised and updated DP (Revision 1). On August 27, 2004, the NRC staff transmitted a letter to MDNR requesting additional information (RAI) related to Revision 1. In a December 20, 2004, letter, MDNR responded to the RAIs and provided supplemental information to the Revision 1 DP that indicated the on-site building, concrete pad and above-grade components of the LCTS would not be removed but would remain intact.

*The Proposed Action*

The proposed action is to amend Source Materials License No. SUC–1581 to incorporate the revised DP into the license. The revised DP proposes that the on-site building, adjacent concrete pad and LCTS remain in place and intact and all residual radioactivity be contained within the on-site engineered cell. With regard to the radiological materials, the site will be released for unrestricted use.

*Need for the Proposed Action*

The proposed action is to amend Source Materials License No. SUC–1581 to conduct activities on-site that would lead to the release of the MDNR Tobico Marsh State Game Area site located at 2301 Two Mile Road, Bay County, Michigan, for unrestricted use. The licensee's action of leaving the radiological material (the thorium-bearing slag) in place within the cell conforms with the NRC regulation that the dose to the average member of the critical group is below the requirements in 10 CFR 20 Subpart E for unrestricted release before license termination. The licensee needs the license amendment to incorporate the revised DP into the license. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for incorporation of a revised DP into the license and to ensure the protection of public health and safety and the environment.

*Alternatives to the Proposed Action*

The NRC staff and MDNR considered four alternatives for the decommissioning plan: (1) Complete removal of the waste cell contents (both radiological and chemical materials); (2) removal of only the radiological material from the waste cell; (3) leaving the radiological material in the waste cell, leaving the on-site building, adjacent concrete pad and LCTS on site, terminating the license, and releasing the site for unrestricted use; and (4) taking no remedial action and retaining the site license (''No Action Alternative''). The preferred alternative, No. 3, is described, in detail, in Revision 1 the DP as supplemented by the December 20, 2004, letter from MDNR.

The MDNR site contains radiological as well as chemical materials. The chemical materials are regulated by the MDEQ under Part 201 of Michigan regulations. The radiological and chemical materials are all contained within an on-site engineered waste cell that has slurry walls and a clay cap.

Alternatives 1 and 2 would cause the contents of the waste cell to be disturbed, leading to a potential release of the materials to the surrounding environment. Specifically, excavation of the waste cell would expose workers and visitors to hazardous materials within the cell. Hazardous materials could be released via effluents or transmission in the air potentially contaminating the surrounding environs. Shipping the materials off-site for disposal could also expose workers and others to the materials before, during, and after shipment to the disposal site. The environmental impact presented by these two alternatives could potentially put workers and the surrounding environment at risk and are, therefore, not environmentally sound options.

Alternative 3 is the preferred alternative, because the alternative has little, if any, impact on the environment. Based on an independent dose assessment, the NRC staff concluded that, if the radiological material in the cell, the building, the concrete pad, and the LCTS are left in place, no additional actions are needed at the MDNR site for it to be released for unrestricted use per 10 CFR 20.1402.

The ''No Action Alternative'' (Alternative 4) is not acceptable because retaining a license would impose an unnecessary regulatory burden on MDNR. Since no additional actions are needed at the MDNR site for it to be released for unrestricted use per 10 CFR 20.1402, there is no longer any need for requiring that the licensee maintain security at the site and/or maintain the site's materials license.

*Environmental Impacts of the Proposed Action*

The Affected Environment at the MDNR site includes the above grade components of the LCTS; the 3-acre landfill encapsulated with slurry walls and a clay cover; the shallow groundwater below the site; and, the potentially impacted offsite groundwater and surface water.

The residual radioactivity at this site consists of two components. The primary source term consists of the magnesium-thorium slag materials buried within the waste cell and secondary source term consists of contamination on surfaces. Site characterization surveys found no evidence that the clay cap, the building or the concrete pad surfaces were contaminated. However, the clay cap could have been contaminated if magnesium-thorium slag materials have been brought to the surface of the cap during site characterization and the contamination could have spread to the building and pad surfaces. Boreholes were drilled through the clay cap during site characterization and samples were collected from within the cell. The concrete pad was also used to process the samples and may have been contaminated during processing. Waste generated during the sampling activities was placed in a 55 gallon drum and stored in the building. The 55 gallon drum could have leaked and contaminated the interior surfaces of the building. The clay cap and all of the building and pad surfaces will be surveyed during the final status surveys.

The radionuclide composition of the primary and secondary source terms are assumed to be the same, because the secondary source terms are essentially derived from the primary source term in the waste cell. The isotopic composition for Th-230 and Th-232 and their progeny is: (1) Pb-210—0.5%, (2) Ra-226—1.1%, (3) Ra-228—16.1%, (4) Th-228—16.1%, (5) Th-230—50.0%, and (6) Th-232—16.1%.

The non-radiological contamination at this site is contained within the encapsulated waste cell. The non-radiological contamination includes organic chemicals which are regulated by the MDEQ, not by the NRC. The non-radiological contamination will be present after NRC license termination. Approval of the proposed action does not absolve the licensee of any other responsibilities it may have under Federal, State, or local statutes or

regulations regarding the non-radiological contamination.

The site and much of the immediate area, except for the adjacent former Hartley & Hartley landfill, is marsh land. The site itself is a small portion of the Tobico Marsh State Game Area. The shallow groundwater on-site is non-potable and there is no surface water.

The environmental impacts of the licensee's requested action were evaluated by reviewing the results of MDNR's dose assessments. Those assessments assume that the radiological contaminants remain within the waste cell and the surfaces of the building and the concrete pad do not exceed the derived concentration guideline levels (DCGLs). The licensee used computer codes RESRAD and DandD to demonstrate that doses from residual radioactivity did not exceed the regulatory limit (25 mrem/yr). RESRAD and DandD used both probabilistic and deterministic procedures for each source term. Since the site will remain a controlled landfill, the most realistic use for the land is infrequent hunting and/or fishing.

Therefore, composite recreational scenario parameters were used by RESRAD to calculate potential on-site doses. The DandD code used all but one default parameters to calculate on-site dose. The ''time in the building'' parameter was adjusted, however, to more realistically describe the potential exposure from the surface radioactivity on the building and the concrete pad. The NRC staff performed independent analyses of the licensee's dose assessments and was in agreement with MDNR's methods and results.

For the residual radioactivity in the waste cell, the licensee assumed that the activity of thorium in the slag was its specific activity and used that activity to generate a dose for the composite recreational use scenario. Even with this very conservative estimate of thorium activity, the estimated potential dose was much less than 25 mrem/yr and no DCGLs were reported for the waste cell.

For the residual radioactivity on the clay cap, the licensee calculated the dose to a recreational user to be much less than 25 mrem/yr. Although there is no evidence that the clay cap is contaminated, the licensee developed gross DCGLs for the clay cap. The gross DCGLs are directly related to the activity of Th-232, a surrogate for the mixture of radionuclides present in the surface contamination. MDNR used the composite recreational scenario to calculate gross DCGLs, even though, MDNR believes that the likelihood of the presence of thorium contaminated materials on the clay cover is extremely low.

For contamination on the surfaces of the building and the concrete pad, the licensee calculated the dose to the average member of the critical group to be much less than 25 mrem/yr. Although there is no evidence that the surfaces of the building and the concrete pad are contaminated, the licensee developed a gross DCGLs for those surfaces. The licensee developed the gross DCGL based upon a light-industrial building use scenario assuming a person spent limited time in the building. Again, NRC staffs' independent analyses of the licensee's dose assessments was in agreement with MDNR's.

The NRC staff evaluated the potential radiological exposure to an offsite receptor resulting from groundwater seepage through the slurry walls. This potential radiological exposure is very low due to the following reasons:

1. Any seepage of radiological contaminated groundwater through the slurry walls will be dispersed and diluted as the groundwater slowly travels to Saginaw Bay of Lake Huron.

2. The travel time for groundwater to reach Saginaw Bay from the site is long (several thousand years) because of the distance (2.24 kilometers) between the two locations and because of the low hydraulic gradient (0.0002 ft/ft) of the water table.

3. Thorium's solubility in groundwater is very low (Appendix I, MDNR, 2004).

4. The concentration of the radiological contaminated groundwater will become highly diluted if it is discharged into the much larger surface water volume of Saginaw Bay.

5. There are no receptors along the groundwater pathway between the site and Saginaw Bay.

The NRC staff also evaluated whether there would be any adverse radiological consequences from the operation of the LCTS and a hypothetical leak from the LCTS. Based on the following consideration, the staff concluded that there would be no adverse consequences. MDNR collected samples of leachate to determine if thorium in the slag had migrated into the leachate. The sampling results provided evidence that the slag was highly insoluble and would not readily migrate within the cell. In addition, there is no evidence that the liquid level within the cell would rise to the point that the LCTS would need to be operated to reduce it. Additionally, to receive any measurable dose, an individual would have to be directly exposed to leachate that had leaked from the LCTS during operation. The probability of a hypothetical leak of contaminated liquid from the operation of the LCTS in sufficient quantities to result in measurable dose to an average member of the critical group is very low. Thus, consideration of possible adverse radiological consequences from leaving the LCTS in place were determined not to be necessary.

The revised DP provides that the radiological contaminants within the waste cell would remain in place and the building and the concrete pad would be decontaminated, if necessary, to meet the DCGLs. The total dose for the site from the radiological material in the waste cell and the surface contamination on the clay cap and the surfaces of the building and concrete pad will not exceed 25mrem/yr.

The NRC staff reviewed the Environmental Impacts of the licensee's requested action to leaving the site ''as is'' and release it for unrestricted use (Alternative 3). Based on the staff's review of the DP, the staff determined that the radiological environmental impacts associated with the licensee's proposed action are bounded by the impacts evaluated in NUREG–1496, ''Generic Environmental Impact Statement of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities.''

*Agencies and Persons Consulted*

This Environmental Assessment was prepared entirely by the NRC staff. The Michigan State Historic Preservation Office and the U. S. Fish and Wildlife Service were contacted regarding this action and neither had concerns regarding this licensing action. No remedial actions are planned for the site, therefore, the release of the MDNR site for unrestricted use would not affect historical or cultural resources, nor will it affect threatened or endangered species. No other sources of information were used beyond those referenced in this EA.

NRC provided a draft of its Environmental Assessment to the State of Michigan Department of Environmental Quality (MDEQ) for its review. MDEQ agreed with the conclusions in the EA.

*Conclusions and Finding of No Significant Impact*

Based on its review, the NRC staff concludes that the proposed action complies with 10 CFR Part 20 Subpart E. NRC has prepared this EA in support of the proposed license amendment to approve the DP. On the basis of the EA, NRC has concluded that the environmental impacts from the

proposed action are expected to be insignificant and has determined that preparation of an Environmental Impact Statement is not needed for the proposed action.

*Sources Used*

1. NRC License No. 06–03754–01 inspection and licensing records.
2. MDNR, Package dated January 30, 2004, ''License Amendment for the Tobico Marsh State Game Site and Submission of a Revised Decommissioning Plan.'' [ADAMS Accession No. ML040790356]
3. NRC, Letter dated August 27, 2004, ''NRC Request for Additional Information (RAI) with Regard to the Decommissioning Plan, Revision 1, for the Michigan Department of Natural Resources' Tobico Marsh State Game Area Site, Kawkawlin, Michigan.'' [ADAMS Accession No. ML042290619]
4. MDNR, Letter dated December 20, 2004, Response to RAI—August 27, 2004, Tobico Marsh State Game Area Site and Submission of Additional Information Relative to the Decommissioning Plan Docket No. 40–9015, License SUC–1581. [ADAMS Accession No. ML050100126]
5. NUREG–1748, Environmental Review Guidance for Licensing Actions Associated with NMSS Programs, August 2003.
6. NUREG–1757, Volume 1, Rev 1, Consolidated NMSS Decommissioning Guidance, Decommissioning Process for Materials Licensees, Final Report, September 2003.
7. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination.''
8. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''
9. MDEQ, E-Mail, ''MDNR Draft EA dated 3/24/05.''
10. NUREG–1496, Generic Environmental Impact Statement of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities, July 1997.

### III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the document related to this notice are: ML042320524 for the August 26, 1999, letter issuing the license, ML032790494 for the April 2, 2003, letter requesting license amendment to incorporate the DP into the license, ML040790356 for the January 30, 2004, letter revising the DP (Revision 1), and ML050100126 for the letter dated December 20, 2004, response to the NRC request for additional information. If you do not have access to ADAMS or if there are problems accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated in Rockville, Maryland this 30th day of June, 2005.

For the Nuclear Regulatory Commission.

**Daniel M. Gillen,**

*Deputy Director, Office of Nuclear Material Safety and Safeguards, Division of Waste Management and Environmental Protection, Decommissioning Directorate.*

[FR Doc. E5–3679 Filed 7–11–05; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission.

**DATE:** Weeks of July 11, 18, 25, August 1, 8, 15, 2005.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of July 11, 2005**

There are no meetings scheduled for the week of July 11, 2005.

**Week of July 18, 2005—Tentative**

There are no meetings scheduled for the week of July 18, 2005.

**Week of July 25, 2005—Tentative**

*Thursday, July 28, 2005*

1:30 p.m.—Discussion of Security Issues (Closed—Ex. 1).

**Week of August 1, 2005—Tentative**

There are no meetings scheduled for the week of August 1, 2005.

**Week of August 8, 2005—Tentative**

There are no meetings scheduled for the week of August 8, 2005.

**Week of August 15, 2005—Tentative**

*Tuesday, August 16, 2005*

10 a.m.—Meeting with the Organization of Agreement States (OAS) and the Conference of Radiation Control Program Directors (CRCPD) (Public Meeting). (Contact: Shawn Smith, (301) 415–2620.)

This meeting will be webcast live at the Web address. *http://www.nrc.gov.*

1 p.m.—Discussion of Security Issues (Closed—Ex. 1).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at (301) 415–7080, TDD: (301) 415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers: if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969. In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: July 11, 2005.

**R. Michelle Schroll,**

*Office of the Secretary.*

[FR Doc. 05–13722 Filed 7–8–05; 9:58 am]

**BILLING CODE 7590–01–M**

## NUCLEAR REGULATORY COMMISSION

### Notice of Availability of Interim Staff Guidance Documents for Spent Fuel Storage Casks

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**FOR FURTHER INFORMATION CONTACT:** Chris Brown, Materials Engineer, Structural and Materials Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. telephone: (301) 415–1988; fax number: (301) 415–8555; e-mail: *clb@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

The Nuclear Regulatory Commission (NRC) prepares draft Interim Staff Guidance (ISG) documents for spent fuel storage or transportation casks or radioactive materials transportation package designs. These ISG documents provide clarifying guidance to the NRC staff when reviewing licensee integrated safety analyses, license applications or amendment requests or other related licensing. The NRC is soliciting public comments on Draft ISG–21, ''Use of Computational Modeling Software,'' which will be considered in the final version or subsequent revisions.

## II. Summary

The purpose of this notice is to provide the public an opportunity to review and comment on the Draft Interim Staff Guidance–21 on the use of Computational Modeling Software (CMS) by an applicant. Draft Interim Staff Guidance–21, Revision 0, provides guidance to NRC staff on how to review computational modeling methods used by an applicant as part of, and in support of, the structural and thermal technical bases for a spent fuel storage or transportation cask or radioactive materials transportation package design.

## III. Further Information

Documents related to this action are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/isg/spent-fuel.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are provided in the following table. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

| Interim staff guidance | ADAMS accession No. |
|---|---|
| Interim Staff Guidance–21 .. | ML051710071 |

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Comments and questions on the draft SFPO ISG–21 should be directed to the NRC contact listed below by August 11, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Christopher Brown, Materials Engineer, Structural and Materials Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Comments can also be submitted by telephone, fax, or e-mail, which are as follows: telephone: (301) 415–1988; fax number: (301) 415–8555; e-mail: *clb@nrc.gov.*

Dated at Rockville, Maryland this 29th day of June, 2005.

For the Nuclear Regulatory Commission.

**Gordon Bjorkman,**

*Chief, Structural and Materials Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E5–3678 Filed 7–11–05; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51966; File No. SR–Amex–2005–049]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to an Amendment to the Generic Listing Standards for Index-Linked Securities

July 1, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On June 17, 2005, the Amex submitted Amendment No. 1 to the proposed rule change.[3] On June 24, 2005, the Amex submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Commentary .01 to Section 107D of the Amex Company Guide (''Company Guide'') for the purpose of permitting the listing and trading, under Section 107D, of index-linked securities (''Index Securities'') based on the Chicago Board Options Exchange, Inc. (''CBOE'') S&P 500(sm) BuyWrite Index (''BXM'') and the CBOE DJIA(sm) BuyWrite Index (''BXD'') (each an ''Index'' and collectively, the ''Indexes''). Proposed Commentary .01 establishes a limited exemption for the BXM and BXD from the continued listing requirement in Section 107D(h) of the Company Guide that an index be calculated and widely disseminated at least every 15 seconds. Below is the text of the proposed rule change, as amended. Proposed new language is in *italics.*

* * * * *

Section 107 Other Securities

The Exchange will consider listing any security not otherwise covered by the criteria of Sections 101 through 106, provided the issue is otherwise suited for auction market trading. Such issues will be evaluated for listing against the following criteria:

A–C. No Change.

D. Index-Linked Securities

Index-linked securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such securities may or may not provide for the repayment of the original principal investment amount. The Exchange may submit a rule filing pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 to permit the listing and trading of index-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1, which replaced and superseded the original filing in its entirety, included an enhanced description of each underlying index and included additional support for not requiring more frequent dissemination of the underlying BuyWrite index value.

[4] Amendment No. 2 made technical corrections to the proposed rule text to reflect the text of Section 107D of the Amex Company Guide in effect on April 28, 2005.

linked securities that do not otherwise meet the standards set forth below in paragraphs (a) through (k). The Exchange will consider for listing and trading pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934, index-linked securities provided:

(a) through (k) No Change.

E. No Change.

Commentary * * *

*.01 Index-linked securities based on CBOE S&P 500 BuyWrite Index℠ (BXM℠) or the CBOE DJIA BuyWrite Index℠ (BXD℠) may be listed and traded pursuant to Section 107D of the Company Guide even though the continued listing requirement found in paragraph (h)(3) providing that an index be calculated and widely disseminated every 15 seconds is not satisfied. An indicative value of an index-linked security based on the BXM and BXD is required to be calculated and disseminated after the close of trading to provide an updated value.*

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Commission recently approved new Section 107D to the Company Guide adopting generic listing standards to permit the listing and trading of Index Securities pursuant to Rule 19b–4(e) under the Act.[5] As a result, the Exchange may now list Index Securities based on an index or indexes (the ''Underlying Index'') that meet the criteria set forth in paragraph (g) of Section 107D of the Company Guide.

Specifically, an Underlying Index is required either to be (i) an index meeting the specific criteria set forth in Section 107D(g) that is similar to current Amex Rule Commentary .02 to Rule 901C; or (ii) an index previously approved for the trading of options or other derivative securities by the Commission under section 19(b)(2) of the Act[6] and rules thereunder. The Commission has granted approvals for particular products based on both the BXM and BXD.[7]

Description of the Indexes

*BXM Index.* The BXM Index is a benchmark index designed to measure the performance of a hypothetical ''buy-write''[8] strategy on the S&P 500. Developed by the CBOE in cooperation with Standard & Poor's Corporation (''S&P''), the Index was initially announced in April 2002.[9] The Exchange states that the CBOE developed the BXM Index in response to requests by options portfolio managers that the CBOE provide an objective benchmark for evaluating the performance of buy-write strategies, one of the most popular option trading strategies. In addition, the BXM Index could also provide investors with a straightforward indicator of the risk-reducing character of options.

The BXM Index is a passive total return index based on (1) buying a portfolio consisting of the component stocks of the S&P 500, and (2) ''writing'' (or selling) near-term S&P 500 call options (SPX), generally on the third Friday of each month. This strategy consists of a hypothetical portfolio consisting of a ''long'' position indexed to the S&P 500 on which are deemed sold a succession of one-month, at-the-money call options on the S&P 500 (SPX) listed on the CBOE. Dividends paid on the component stocks underlying the S&P 500 and the dollar value of option premium deemed received from the sold call options are functionally ''re-invested'' in the covered S&P 500 portfolio.

The value of the BXM Index on any given date will equal: (1) The value of the BXM Index on the previous day, multiplied by (2) the daily rate of return[10] on the covered S&P 500 portfolio on that date. Thus, the daily change in the BXM Index reflects the daily changes in value of the covered S&P 500 portfolio, which consists of the S&P 500 (including dividends) and the component S&P 500 option (SPX). The daily closing price of the BXM Index is calculated and disseminated by the CBOE on its Web site at *http://www.cboe.com* and via the Options Pricing and Reporting Authority (''OPRA'') at the end of each trading day. The value of the S&P 500 Index is disseminated at least once every fifteen (15) seconds throughout the trading day. The Exchange believes that the dissemination of the S&P 500 along with the ability of investors to obtain S&P 500 call option pricing provides sufficient transparency regarding the BXM Index.[11] In addition, as indicated above, the value of the BXM Index is calculated once every trading day, thereby providing investors with a daily value of such ''hypothetical'' buy-write options strategy on the S&P 500.

*BXD Index.* Similar to the BXM Index with respect to the S&P 500, the BXD Index is a benchmark index designed to measure the performance of a hypothetical ''buy-write'' strategy on the DJIA. Developed by the CBOE in cooperation with Dow Jones & Company (''Dow Jones''), the BXD Index was

[5] *See* Securities Exchange Act Release No. 51563 (Apr. 15, 2005), 70 FR 21257 (Apr. 25, 2005) (File No. SR–Amex–2005–001).

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release Nos. 51840 (June 14, 2005), 70 FR 35468 (June 20, 2005) (File No. SR–Amex–2005–042) (approving the listing and trading of JPMorgan Chase Notes linked to the BXD Index); 51634 (Apr. 29, 2005), 70 FR 24138 (May 6, 2005) (File No. SR–Amex–2005–036) (approving the listing and trading of Wachovia Notes linked to the BXM Index); 51426 (Mar. 23, 2005), 70 FR 16315 (Mar. 30, 2005) (File No. SR–Amex–2005–022) (approving the listing and trading of Morgan Stanley Notes linked to the BXM Index); and 50719 (Nov. 22, 2004), 69 FR 69644 (Nov. 30, 2004) (File No. SR–Amex–2004–55) (approving the listing and trading of Morgan Stanley Notes linked to the BXM Index).

[8] A ''buy-write'' is a conservative options strategy in which an investor buys a stock or portfolio and writes call options on the stock or portfolio. This strategy is also known as a ''covered call'' strategy. A buy-write strategy provides option premium income to cushion decreases in the value of an equity portfolio, but will underperform stocks in a rising market. A buy-write strategy tends to lessen overall volatility in a portfolio.

[9] The BXM Index consists of a long position in the component securities of the S&P 500 and options on the S&P 500.

[10] The daily rate of return on the covered S&P 500 portfolio is based on (a) the change in the closing value of the stocks in the S&P 500 portfolio, (b) the value of ordinary cash dividends on the stocks underlying the S&P 500, and (c) the change in the market price of the call option. The daily rate of return will also include the value of ordinary cash dividends distributed on the stocks underlying the S&P 500 that are trading ''ex-dividend'' on that date (that is, when transactions in the stock on an organized securities exchange or trading system no longer carry the right to receive that dividend or distribution) as measured from the close in trading on the previous day.

[11] Call options on the S&P 500 (SPX) are traded on the CBOE, and both last sale and quotation information for the call options are disseminated in real-time through OPRA. The Exchange states that the value of the BXM can be readily approximated as a function of observable market prices throughout the trading day. In particular, such a calculation would require information on the current price of the S&P 500 Index and specific nearest-to-expiration call and put options on that Index. The Exchange represents that these components trade in highly liquid markets, and real-time prices are available continuously throughout the trading day from a number of sources including Bloomberg and the CBOE.

initially announced in March 2005.[12] The BXD was set to an initial value of 100.00 as of October 16, 1997. The Exchange states that, as with the BXM Index, the CBOE developed the BXD Index in response to requests by options portfolio managers to provide an objective benchmark for evaluating the performance of buy-write strategies, as well as to provide investors with a straightforward indicator of the risk-reducing character of options.

The BXD Index is a passive total return index based on (1) buying a portfolio consisting of the component stocks of the DJIA, and (2) ''writing'' (or selling) near-term DJIA call options (DJX), generally on the third Friday of each month. This strategy consists of a hypothetical portfolio consisting of a ''long'' position indexed to the DJIA on which are deemed sold a succession of one-month, at-the-money call options on the DJIA (DJX) listed on the CBOE. Dividends paid on the component stocks underlying the DJIA and the dollar value of option premium deemed received from the sold call options are functionally ''re-invested'' in the covered DJIA portfolio.

The value of the BXD Index on any given date will equal: (1) The value of the BXD Index on the previous day, multiplied by (2) the daily rate of return [13] on the covered DJIA portfolio on that date. Thus, the daily change in the BXD Index reflects the daily changes in value of the covered DJIA portfolio, which consists of the DJIA (including dividends) and the component DJIA call option (DJX). The daily closing price of the BXD Index is calculated and disseminated by the CBOE on its Web site at *http://www.cboe.com* and via OPRA at the end of each trading day. The value of the DJIA is disseminated at least once every fifteen (15) seconds throughout the trading day. The Exchange believes that the dissemination of the DJIA along with the ability of investors to obtain DJIA call option (DJX) pricing provides sufficient transparency regarding the BXD Index.[14] In addition, as indicated above, the value of the BXD Index is calculated once every trading day, thereby providing investors with a daily value of such ''hypothetical'' buy-write options strategy on the DJIA.

Generic Listing Standards for Index-Linked Securities

The Exchange represents that, consistent with Section 107D(g)(1) of the Company Guide, the Index Securities based on the BXM or BXD, as applicable, will comply with the conditions of the applicable Commission orders regarding such Index.[15] For example, Index Securities based on the Indexes are subject to the condition in the Commission's orders requiring the Exchange to disseminate an Indicative Value. In addition, the Commission's orders also provide that if the Indexes cease to be calculated and disseminated, the Exchange would undertake to delist the Notes.

To date, the Exchange has listed non-principal protected Index Securities based on the BXM with and without the payment of interest.[16] These Index Securities are also subject to an exchange option by investors and redemption by the issuer. As noted above, the BXM and BXD are not calculated or disseminated continuously throughout the trading day. Instead, the CBOE calculates the value of each Index shortly after the close. Pursuant to the previous Commission orders regarding the BXM and BXD, the Exchange represents that it will provide an Indicative Value of the Index Security based on the BXM or BXD, as applicable. The Indicative Value is an updated value of the amount investors would receive for the Index Security if exchanged or redeemed. The Exchange states that the Indicative Value equals the performance of the Index less fees and other adjustment amounts, if any. The Indicative Value is calculated by the Amex after the close of trading and after the BXM and BXD are calculated for use by investors during the next trading day. It is designed to provide investors with a daily reference value of the adjusted Index. The Exchange states that the Indicative Value may not reflect the precise value of the Index Security.

The new continued listing standards set forth in Section 107D(h) provide for the delisting or removal from listing of an Index Security under any of the following circumstances:

- If the aggregate market value or the principal amount of the securities publicly held is less than $400,000;
- If the value of the Underlying Index is no longer calculated and widely disseminated on at least a 15-second basis; or
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Because the BXM and BXD are not calculated and disseminated every 15 seconds, the Exchange seeks a limited exception from this continued listing requirement. In proposed Commentary .01 to Section 107D of the Company Guide, the Exchange provides that, although the BXM and BXD do not satisfy the requirements of Section 107D(h), securities based on these Indexes may nevertheless be listed and traded pursuant to the generic standards set forth in Section 107D. The Exchange believes that the dissemination of the S&P 500 with respect to the BXM and the DJIA with respect to the BXD, along with the ability of investors to obtain call option pricing provides sufficient transparency regarding the Indexes. In addition, the value of each Index is calculated once every trading day, thereby providing investors with a daily value of such ''hypothetical'' buy-write options strategy. Given the nature of the Indexes as ''buy-write'' strategies coupled with the transparency of the underlying S&P 500 or DJIA and related call options, the Exchange believes that the dissemination requirement found in Section 107D(h) of the Company Guide is not necessary for these particular Indexes. Accordingly, the Exchange requests that the Commission approve the limited exception found in proposed Commentary .01.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act [17] in general, and furthers the objectives of section 6(b)(5) of the Act [18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged

[12] The BXD Index consists of a long position in the component securities of the DJIA and options on the DJIA (DJX). *See http://www.cboe.com/bxd*.

[13] The daily rate of return on the covered DJIA portfolio is based on (a) the change in the closing value of the stocks in the DJIA portfolio, (b) the value of ordinary cash dividends on the stocks underlying the DJIA, and (c) the change in the market price of the call option. The daily rate of return will also include the value of ordinary cash dividends distributed on the stocks underlying the DJIA that are trading ''ex-dividend'' on that date (that is, when transactions in the stock on an organized securities exchange or trading system no longer carry the right to receive that dividend or distribution) as measured from the close in trading on the previous day.

[14] Call options on the DJIA (DJX) are traded on the CBOE, and both last sale and quotation information for the call options are disseminated in real-time through OPRA. The Exchange states that the value of the BXD can be readily approximated as a function of observable market prices throughout the trading day. In particular, such a calculation would require information on the current price of the DJIA and specific nearest-to-expiration call and put options on that Index. The Exchange represents that these components trade in highly liquid markets, and real-time prices are available continuously throughout the trading day from a number of sources including Bloomberg and the CBOE.

[15] *See supra* note 7.

[16] *See supra* note 7.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange states that no written comments were solicited or received with respect to the proposed rule change, as amended.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–049 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–Amex–2005–049. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Amex–2005–049 and should be submitted on or before August 2, 2005.

**IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change**

The Amex has asked the Commission to approve the proposal on an accelerated basis. After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[19] The Commission notes that it has approved several instruments currently listed and traded on the Amex which are based on either the BXM or BXD.[20] The Commission finds that the limited exception for the BXM and BXD Indexes contained in proposed Commentary .01 to Section 107D of the Company Guide from the continued listing requirement under Section 107D(h) of the Company Guide that an index be calculated and disseminated every 15 seconds is consistent with the Act and will promote just and equitable principles of trade, and foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to and facilitating transactions in securities consistent with section 6(b)(5) of the Act.[21] Consistent with Section 107D(h)(2) of the Company Guide, the limited exception in Commentary .01 incorporates additional continued listing requirements in prior approval orders that an Indicative Value, reflecting the performance of the Index less fees and other adjustments, must be disseminated shortly after the close of trading.

The requirements of Section 107A of the Company Guide (which are applicable pursuant to Section 107D(a)) were designed to address the concerns attendant to the trading of hybrid securities, like the securities linked to the BXM or BXD Indexes contemplated here. For example, Section 107A of the Company Guide provides that only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's ''Other Securities'' listing standards further require that the Notes have a market value of at least $4 million.[22] In any event, financial information regarding the issuers of such securities, in addition to the information on the component stocks, which are reporting companies under the Act, and the index-linked securities, which will be registered under section 12 of the Act, will be available.

In approving the product, the Commission recognizes that the Indexes are passive total return indexes based on (1) buying a portfolio consisting of the component stocks of the S&P 500 or DJIA, as applicable, and (2) ''writing'' (or selling) near-term S&P 500 call options (SPX) or DJIA call options (DJX), as applicable, generally on the third Friday of each month. Given the large trading volume and capitalization of the compositions of the stocks underlying the S&P 500 and DJIA, the Commission believes that the listing and trading of securities that are linked to the BXM or BXD Index should not unduly impact the market for the underlying securities compromising the S&P 500 or DJIA, as applicable, or raise manipulative concerns.[23] Moreover, the issuers of the underlying securities comprising the S&P 500 or DJIA, as applicable, are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets.

The Commission also believes that any concerns that a broker-dealer, such as the issuer of such index-linked securities, or a subsidiary providing a hedge for the issuer, will incur undue position exposure are minimized by the size of the issuance in relation to the net worth of the issuer.[24]

[19] 15 U.S.C. 78f(b)(5).

[20] *See supra* note 7.

[21] 15 U.S.C. 78f(b)(5). In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] *See* Section 107A(c) of the Company Guide.

[23] Issuers of such Commission-approved BXM or BXD-linked securities have disclosed in the relevant prospectuses and prospectus supplements that their (and their affiliates') hedging activities, including taking positions in the stocks underlying the applicable Index and selling call options on such Index, could adversely affect the market value of the securities from time to time and the redemption amount holders of the securities would receive on them. Such hedging activity must, of course, be conducted in accordance with applicable regulatory requirements.

[24] *See* Section 107D(e) of the Company Guide; *see also* Securities Exchange Act Release Nos. 44913 (Oct. 9, 2001), 66 FR 52469 (Oct. 15, 2001) (File No. SR–NASD–2001–73) (order approving the listing and trading of notes whose return is based on the

Finally, the Commission notes that the value of the applicable Index will be calculated and disseminated by the CBOE once every trading day after the close of trading. However, the Commission notes that the value of both the S&P 500 and DJIA will be widely disseminated at least once every fifteen seconds throughout the trading day and that investors are able to obtain real-time call option pricing on the Indexes during the trading day.[25] Further, the Indicative Value for the BXM and BXD index-linked securities, which will be calculated by the Amex after the close of trading and after the CBOE calculates the BXM and BXD Indexes for use by investors during the next trading day, is designed to provide investors with a daily reference value of the adjusted Index. Consistent with the Commission's previous orders,[26] the Commission notes that issuers of such products have agreed to arrange to have the applicable Index calculated and disseminated on a daily basis through a third party in the event that the CBOE discontinues calculating and disseminating the Index. In such event, the Exchange agrees to obtain Commission approval, pursuant to filing the appropriate Form 19b–4, prior to the substitution of the applicable Index. Further, the Commission notes that the Exchange has agreed to undertake to delist the relevant index-linked securities in the event that the CBOE ceases to calculate and disseminate the applicable BXM or BXD Index, and the relevant issuer is unable to arrange to have such Index calculated and widely disseminated through a third party.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because it states that this proposal raises no new or novel issues and would permit it, pursuant to Section 107D of the Company Guide, to list and trade index-linked securities based on the BXM and BXD Indexes. The Commission believes that the listing and trading of such securities should provide investors with additional investment choices and that accelerated approval of the proposal would allow investors to begin trading such securities promptly. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[27] to approve the proposal, as amended, on an accelerated basis.

## V. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[28] that the proposed rule change (SR–Amex–2005–049), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 05–13602 Filed 7–11–05; 8:45 am]

**BILLING CODE 8010–01–P**

performance of the Nasdaq–100 Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (File No. SR–Amex–2001–40) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index); and 37744 (Sept. 27, 1996), 61 FR 52480 (Oct. 7, 1996) (File No. SR–Amex–96–27) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities).

[25] In the event that such dissemination of the S&P 500 and DJIA index values (or any successor index) and real-time call option pricing is not available, the Exchange has agreed to undertake to delist the relevant BXM or BXD index-linked securities. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on June 30, 2005.

[26] *See supra* note 7.

[27] 15 U.S.C. 78s(b)(2).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 1–32170]**

## Issuer Delisting; Notice of Application of NutriSystem, Inc., To Withdraw Its Common Stock, $.001 Par Value, From Listing and Registration on the American Stock Exchange LLC

July 6, 2005.

On June 22, 2005, NutriSystem, Inc., a Delaware corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.001 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

On June 20, 2005, the Board of Directors (''Board'') of the Issuer unanimously approved resolutions to withdraw the Security from listing and registration on Amex and to list the Security on the Nasdaq National Market (''Nasdaq''). The Issuer stated that the Board determined to withdraw the Security from listing on Amex based on the following opinions of the Board: (i) Nasdaq is the premier stock market for high growth companies because it is a screen-based electronic marketplace with competing market makers that offer faster trade execution times, reduced trading volatility, increased liquidity, and greater exposure to and coverage by institutions that invest in high growth markets; and (ii) in light the aforementioned advantages, it is in the best interest of the Issuer and its stockholders to list the Security on Nasdaq.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and provided written notice of withdrawal to Amex.

The Issuer's application relates solely to withdrawal of the Security from listing on the Amex and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before July 29, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–32170 or;

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–32170. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 05–13605 Filed 7–11–05; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 11, 2005:

A Closed Meeting will be held on Friday, July 15, 2005, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Goldschmid, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the Closed Meeting scheduled for Friday, July 15, 2005, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

[5] 17 CFR 200.30–3(a)(1).

Dated: July 7, 2005.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 05–13710 Filed 7–7–05; 4:09 pm]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27996]**

### Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

July 6, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 1, 2005, to the Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC. 20549–9303, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addressees) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 1, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Unitil Corporation, et al. (70–10310)**

Unitil Corporation (''Unitil''), a registered holding company, of 6 Liberty Lane West, Hampton, New Hampshire 03842-1720; and its wholly-owned public-utility subsidiaries, Fitchburg Gas and Electric Light Company (''Fitchburg'') and Unitil Energy Systems, Inc. (''Unitil Energy''); and its wholly-owned non-utility subsidiaries, Unitil Power Corp. (''Unitil Power''), Unitil Realty Corp. (''Unitil Realty''), Unitil Resources, Inc. (''Unitil Resources'') and Unitil Service Corp. (''Unitil Service'' and, together with Fitchburg, Unitil Energy, Unitil Power, Unitil Realty and Unitil Resources, the ''Subsidiaries'') (and the Subsidiaries together with Unitil, the ''Applicants'') have filed an application-declaration (''Declaration'') under Sections 6(a), 7 and 12(b) of the Act and Rules 45, 52, 53 and 54 under the Act. Applicants seek authority through June 30, 2006 (the ''Authorization Period'') for certain hedging transactions with respect to existing indebtedness in order to manage and minimize interest rate costs, and certain hedging transactions with respect to anticipatory debt issuances in order to lock-in current interest rates and/or manage interest rate risk exposure.

*Background*

The Unitil system distributes electricity in the southeastern seacoast and capital city areas of New Hampshire and distributes both electricity and natural gas in the greater Fitchburg area of north central Massachusetts through its two subsidiaries that are ''public utility companies'' within the meaning of Section 2(a)(5) of the Act (Fitchburg and Unitil Energy). Unitil's public utilities serve approximately 97, 500 electric customers and 15,000 natural gas customers in their franchise areas. Unitil Service provides, at cost, a variety of administrative and professional services on a centralized basis to its affiliated Unitil companies in accordance with a service agreement approved by the Commission. Unitil Realty owns and manages the Unitil's corporate office in Hampton, New Hampshire and leases this facility to Unitil Service under a long-term lease arrangement. Unitil Resources provides energy related consulting and management services to customers outside of the Unitil system of affiliates. Unitil Power formerly functioned as the full requirements wholesale power supply provider for Unitil Energy. In connection with the implementation of electric industry restructuring in New Hampshire, Unitil Power ceased being the wholesale supplier of Unitil Energy on May 1, 2003 and divested of its long-term power supply contracts through the sale of the entitlements to the electricity associated with those contracts.

By order dated June 30, 2003 (HCAR No. 27691, (the ''Short Term Debt Order'')), the Applicants are currently authorized to make unsecured short-term borrowings in the amount of $55 million for Unitil and $35 million for Fitchburg, and to operate a Money Pool.

*Requests Authorization*

(a) *Interest Rate Hedges.* Until, and to the extent not exempt pursuant to Rule 52, the Subsidiaries, request authorization to enter into interest rate hedging transactions with respect to existing indebtedness (''Interest Rate Hedges''), subject to certain limitations and restrictions.[1] Interest Rate Hedges would be used as a means of prudently managing the risk associated with outstanding debt issued pursuant to, and subject to the limitations of, financing authority granted to the Applicants by the Commission under the Act or an applicable exemption by, in effect, synthetically (i) converting variable-rate debt to fixed-rate debt, (ii) converting fixed-rate debt to variable-rate debt, and (iii) limiting the impact of changes in interest rates resulting from variable-rate debt. In no case will the notional principal amount of any interest rate hedge exceed the face value of the underlying debt instrument and related interest rate exposure. Transactions will be entered into for a fixed or determinable period. Thus, the Applicants will not engage in leveraged or speculative derivative hedging transactions. Interest Rate Hedges (other than exchange-traded Interest Rate Hedges) would only be entered into with counterparties (''Approved Counterparties'') whose senior unsecured debt ratings, or the senior unsecured debt ratings of the parent companies providing a guarantee of the counterparties, as published by Standard & Poors Rating Services, are equal to or greater than BBB, or an equivalent rating from Moody's Investors Service or Fitch Inc.

Interest Rate Hedges would involve the use of financial instruments commonly used in today's capital markets, such as exchange-traded interest rate futures contracts and over-the-counter interest rate swaps, caps, collars, floors, options, forwards, and structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury Securities or U.S. government agency (*e.g.*, Fannie Mae) obligations, or London Interbank Offered Rate—(''LIBOR'')—based swap instruments and similar products designed to manage interest rate or credit risks. The transactions would be for fixed periods and stated notional amounts.

(b) *Anticipatory Hedges.* In addition, Unitil and the Subsidiaries request authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings (the ''Anticipatory Hedges''), subject to certain limitations and restrictions. Such Anticipatory Hedges (other than exchange-traded Anticipatory Hedges) would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (i) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury Securities and/or a forward-dated swap (each a ''Forward Sale''), (ii) the purchase of put options on U.S. Treasury Securities (a ''Put Options Purchase''), (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury Securities (a ''Zero Cost Collar''), (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury Securities, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges.

Anticipatory Hedges would be executed on-exchange (''On-Exchange Trades'') with brokers through (i) the opening of futures and/or options positions traded on the Chicago Board of Trade, the New York Mercantile Exchange or other financial exchange, (ii) the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades''), or (iii) a combination of On-Exchange Trades and Off-Exchange Trades. Unitil would determine the optimal structure of each Anticipatory Hedge transaction at the time of execution.

(c) *General.* The Applicants will comply with Statement of Financial Accounting Standards (''SFAS'') 133 (''Accounting for Derivative Instruments and Hedging Activities''), SFAS 138 (''Accounting for Certain Derivative Instruments and Certain Hedging Activities'') and SFAS 149 (''Amendment of Statement 133 on Derivative Instruments and Hedging Activities'') or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board (''FASB''). The Applicants represent that each Interest Rate Hedge and each Anticipatory Hedge will qualify for hedge accounting treatment under the current FASB standards in effect and as determined as of the date such Interest Rate Hedge or Anticipatory Hedge is entered into. The applicants will also comply with any future FASB financial disclosure requirements associated with hedging transactions.

Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an interest rate risk management arrangement will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

Applicants state that the authorization sought herein shall be conditioned upon Unitil, Fitchburg and Unitil Energy maintaining a common equity level of at least 30% of its consolidated capitalization during the Authorization Period.[2] As of March 31, 2005, 40% of Unitil's consolidated capitalization was common equity; 42% of Unitil Energy's capitalization was common equity; and 35% of Fitchburg's consolidated capitalization was common equity.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 05–13603 Filed 7–11–05; 8:45 am]

**BILLING CODE 8010–01–M**

[1] Applicants represent that hedging transactions by Fitchburg and Unitil Energy may not be exempt under Rule 52 because the relevant public utility commissions may not have jurisdiction over the issuance. For example, the Massachusetts Department of Telecommunications and Energy does not have jurisdiction over short-term securities issuances by public utilities. On the other hand, Applicants state that Unitil Energy's entry into Interest Rate Hedges and Anticipatory Hedges will require approval of the New Hampshire Public Service Commission and therefore may be exempt from Commission approval under Rule 52.

[2] Consolidated Capitalization is defined to include, where applicable, all common stock equity (comprised of common stock, additional paid-in capital, retained earnings, treasury stock and other comprehensive income), minority interests, preferred stock, preferred securities, equity-linked securities, long-term debt, short-term debt and current maturities.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27995]**

## Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

July 6, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection

through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 28, 2005, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 28, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Enron Corp., et al. (70–10309)**

Enron Corp. (''Enron'' or ''Applicant''), 1221 Lamar, Suite 1600, Houston, Texas 77010–1221, a registered holding company, on its behalf and on behalf of its subsidiaries held as of the date of this notice, including Portland General Electric Company (''Portland General''), 121 Salmon Street, Portland, Oregon 97204, a public utility company (collectively, ''Applicants''), have filed an application-declaration (''Application'') with the Commission under sections 6(a), 7, 9(a), 10, 12(b),(c), and (f), 13(b) of the Act and rules 42–46, 52–54, 80–87, and 90–91 under the Act.

**I. Introduction**

*A. Enron and Its Subsidiaries*

1. Enron

Enron is a registered holding company within the meaning of the Act by reason of its ownership of all of the outstanding voting securities of Portland General, an Oregon electric public utility company. From 1985 through mid-2001, Enron grew from a domestic natural gas pipeline company into a large global natural gas and power company. Headquartered in Houston, Texas, Enron and its subsidiaries historically provided products and services related to natural gas, electricity, and communications to wholesale and retail customers.

Commencing on December 2, 2001, and periodically thereafter, Enron and certain of its subsidiaries each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the ''Bankruptcy Code'') in the United States Bankruptcy Court for the Southern District of New York (''Bankruptcy Court''). One hundred eighty (180) Enron-related entities filed voluntary petitions. Enron and its subsidiaries that filed voluntary petitions are referred to as the ''Reorganized Debtors.'' [1] Portland General, Enron's sole public utility subsidiary company, did not file a voluntary petition under the Bankruptcy Code and is not in bankruptcy. Likewise, many other Enron-affiliated companies that are operating companies have not filed bankruptcy petitions and continue to operate their businesses.

On March 9, 2004, Enron registered as a holding company under the Act. On that date the Commission issued an order authorizing Enron and certain subsidiaries to engage in financing transactions, nonutility corporate reorganizations, the declaration and payment of dividends, affiliate sales of goods and services, and other transactions needed to allow the applicants to continue their businesses through the time leading up to the expected sale of Portland General at which point Enron would deregister under the Act (''Omnibus Order'').[2] The second order, referred to as the ''Plan Order'', authorized the Fifth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code, dated January 9, 2004 (''Fifth Amended Plan'') under section 11(f) of the Act.[3] The Plan Order also constituted a report on the Fifth Amended Plan under section 11(g) of the Act and authorized the debtors to continue the solicitation of votes of the debtors' creditors for acceptances or rejections of the Fifth Amended Plan.

By order, dated July 15, 2004, the Bankruptcy Court confirmed the Supplemental Modified Fifth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, dated July 2, 2004 (the ''Plan''). The Effective Date of the Plan occurred on November 17, 2004. With limited exceptions the Debtors became Reorganized Debtors.

As explained in the Plan Order, the Plan does not provide for Enron to survive in the long term as an ongoing entity with any material operating businesses. Enron's role as a Reorganized Debtor is to hold and sell assets and to manage the litigation of the estates pending the final conclusion of the bankruptcy cases.

On November 17, 2004, the debtors entered into a common equity trust agreement and a Preferred Equity Trust Agreement with Stephen Forbes Cooper LLC, a New Jersey limited liability company (''SFC'').[4] Under the Common Equity Trust Agreement and the Preferred Equity Trust Agreement, SFC acts as a trustee of two trusts formed to hold Enron's Common Stock (the ''Common Equity Trust'') and four classes of preferred stock (the ''Preferred Equity Trust''), respectively, which were issued pursuant to the Plan on its Effective Date. The beneficiaries of these two trusts are the former holders of Enron's common stock and four classes of preferred stock that were cancelled on the Effective Date pursuant to the Plan. The interests in such trusts are uncertified, non-voting and non-transferable, except that such interests may be transferred by the laws of descent and distribution. In the highly unlikely event that the value of Enron's assets exceed the amount of its allowed claims under the Plan, Enron will make distributions pursuant to the Plan to the Common Equity Trust and the Preferred Equity Trust based upon the relative rights and preferences of the stock of Enron that such trusts hold, and such trusts will make distributions to the holders of their trust interests. Distributions from the Preferred Equity Trust will be made based upon the relative rights and preferences allocated among its trusts interests. The Common Equity Trust Agreement and the Preferred Equity Trust Agreement do not provide for compensation of SFC as trustee, which compensation is, instead, provided for in the Reorganized Debtor Plan Administration Agreement (the ''Plan Administration Agreement'').

On November 17, 2004, Enron and certain of its affiliates consummated the sale of 100% of the equity interests of CrossCountry Energy, LLC (''CrossCountry'') to CCE Holdings, LLC, a joint venture of Southern Union Company and GE Commercial Finance Energy Financial Services, an affiliate of the General Electric Corporation. CrossCountry was formed in June 2003 to hold interests in and operate Enron's interstate natural gas pipeline assets,

[1] The Portland Debtors are Portland General Holdings, Inc. and Portland Transition Company, Inc. Reorganized Debtors mean the debtors, other than the Portland Debtors, from and after November 17, 2004. As used in this Application, when relief is requested for the Reorganized Debtors, the Portland Debtors shall be deemed included in such request.

[2] *Enron Corp., et al.,* Holding Co. Act Release No. 27809 (March 9, 2004), Enron Corp., et al., Holding Co. Act Release No. 27882 (August 6, 2004) (''Supplemental Order'').

[3] *Enron Corp.,* Holding Co. Act Release No. 27810 (March 9, 2004).

[4] SFC has provided management services to the debtors during the course of their bankruptcy. Also, prior to the Effective Date, Stephen Cooper, a member of SFC, has acted as Interim President, Interim Chief Executive Officer and Chief Restructuring Officer of the Company.

including Enron's interest in Transwestern Pipeline Company, Citrus Corp. and Northern Plains Natural Gas Company. CCE Holdings, LLC paid Enron and its affiliates a net cash purchase price of approximately $2.1 billion.

2. Portland General

Portland General, incorporated in 1930, is a single, integrated electric utility engaged in the generation, purchase, transmission, distribution, and retail sale of electricity in the State of Oregon. Portland General also sells wholesale electric energy to utilities, brokers, and power marketers located throughout the western United States. Portland General's service area is located entirely within Oregon and covers approximately 4,000 square miles. It includes 52 incorporated cities, of which Portland and Salem are the largest. Portland General estimates that at the end of 2004 its service area population was approximately 1.5 million, comprising about 43% of the state's population. As of December 31, 2004, Portland General served approximately 767,000 retail customers. For the 12 months ended December 31, 2004, Portland General and its subsidiaries had operating revenues of $1,454 million and net income of $92 million on a consolidated basis. As of December 31, 2004, Portland General and its subsidiaries had retained earnings of $637 million and assets of $3,403 million on a consolidated basis.

3. Prisma Energy International Inc.

Prisma Energy International Inc. (''Prisma'') is a foreign utility company (''FUCO''). Prisma is a Cayman Islands limited liability company that was organized on June 24, 2003, for the purpose of acquiring the Prisma assets consisting principally of non-U.S. electric and gas utility businesses and related intercompany loans and contractual rights. Enron and its affiliates have contributed the Prisma assets to Prisma in exchange for shares of Prisma Common Stock commensurate with the value of the Prisma assets contributed. Prisma is engaged in the generation and distribution of electricity, the transportation and distribution of natural gas and liquefied petroleum gas, and the processing of natural gas liquids.

**II. Requested Authority**

The Applicants request authorization for certain financing, nonutility corporate reorganizations, dividends, affiliate sales of goods and services and related transactions until July 31, 2008 (''Authorization Period''), to allow Enron and its subsidiaries to continue to operate their businesses. In particular, Applicants request authorization for intrasystem extensions of credit, cash management arrangements among Enron group companies other than Portland General, and for the issuance of debt by Portland General. Applicants state that, generally, the authorizations requested extend, during the Authorization Period, the authorizations granted by the Commission in the Omnibus and Supplemental Orders.

*A. Letters of Credit*

Under the Omnibus Order, as amended by the Supplemental Order, Enron extended or replaced the letters of credit that were outstanding under its Second Amended DIP Credit Agreement (as defined in the Omnibus Order) with a new agreement with Wachovia Bank National Association. Under this agreement, Enron and certain other Reorganized Debtors were authorized to issue letters of credit on a secured basis, in an amount not to exceed $25 million, in order to replace the existing letters of credit outstanding under the Second Amended DIP Credit Agreement. Applicants, other than Portland General, seek authorization to replace or extend such letters of credit and to enter into one or more new letter of credit agreements for the issuance of letters of credit in an aggregate amount of up to $25 million, as necessary, during the Authorization Period.

The replacement letters of credit would be cash collateralized and would not be guaranteed by any subsidiaries of Enron, including Portland General. To the extent that a letter of credit is issued on behalf of an Enron subsidiary, such subsidiary would post the cash collateral. The reimbursement obligations in connection with the letters of credit would not be secured by a pledge of Portland General stock under the facilities authorized in this Application. In addition, no letters of credit would be issued on behalf of Portland General.

*B. Enron Cash Management*

Following the Effective Date and consistent with the Plan, Applicants have managed cash on a centralized basis to facilitate implementation of the Plan. In the normal course of operations and as approved by the Amended Cash Management Order issued by the Bankruptcy Court, Enron and its subsidiaries have an active cash management system and overhead cost allocations that result in significant intercompany transactions recorded as intercompany payables, receivables and debt. With respect to activity in which one party is a Reorganized Debtor, an interest rate equal to one month London Interbank Offered Rate (''LIBOR'') plus 250 basis points is charged on outstanding balances. With respect to activity between non-debtors, no interest is charged.

Applicants seek Commission authorization for associate companies, other than Portland General, to continue to borrow and lend funds during the Authorization Period under these terms. Portland General is not a lender to Enron or any other Enron group company and will not make loans under the authorization requested. Applicants maintain that except as noted below Portland General does not seek authorization in this Application to lend to Enron or any other Enron group company.

*C. Portland General Cash Management Agreements*

Portland General has entered into agreements with its wholly-owned subsidiaries for cash management. Applicants state that the cash management agreements, like typical money pools, permit the efficient use of cash resources. Under the agreements, Portland General periodically transfers from the bank accounts of each subsidiary any cash held in the subsidiary's bank account. If the subsidiary has cash needs in excess of any amount remaining in the account, upon request, Portland General transfers the required amount into the subsidiary's bank account. Portland General does not pay interest on the amounts transferred from a subsidiary's account unless the closing balance of the amount transferred at the end of any month exceeds $500,000. Any interest paid is at an annual rate of three percent (3%) and is retained by Portland General until returned to the subsidiary to meet its cash needs. All administrative expenses are borne by Portland General. Portland General seeks authorization to continue to perform under such cash management agreements.

*D. Global Trading Contract and Asset Settlement and Sales Agreements*

Certain settlement agreements and asset sales entered into by Enron and its subsidiaries may involve extensions of credit among associate companies subject to section 12(b) of the Act and rule 45(a). Enron's subsidiaries were extensively engaged in retail and/or wholesale trading in various commodities including, but not limited to, energy, natural gas, paper pulp, oil and currencies. Subsequent to the bankruptcy filings, these companies

now are engaged in settling these contracts with unaffiliated counterparties. The settlement agreements often take the form of global contract or asset settlements whereby several Enron subsidiaries seek to settle numerous retail or wholesale trading and related contracts or claims to assets with a group of related counterparties. Settlements of energy trading contracts entered into by Portland General are not addressed in this section. In addition, asset or stock sale agreements may be entered into between Enron and/or its subsidiaries and unaffiliated counterparties. The settlements and sales may involve extensions of credit among associate companies, guaranties and indemnifications. Some of the claims resolved in these settlements are in-the-money to the settling Enron companies (*i.e.,* money is owed to the settling Enron companies). Other claims (which will be resolved through the claims process and result in distributions after the approval of the Plan) are out-of-the money (*i.e.,* money is owed by the settling Enron companies to the settling counterparty companies). Under a settlement agreement, or asset or stock sale agreement, the value associated with a group of contracts or claims may be netted into a single aggregate payment to be paid to or by the appropriate Reorganized Debtor(s) to resolve all claims between the settling Enron companies and the settling counterparty companies. Although undefined at the time of the settlement, each settling company presumably has some right to a portion of the settlement proceeds or a liability for a portion of the settlement payment, so, arguably, collecting or paying the funds centrally would create a form of an intercompany extension of credit. Applicants seek to continue to execute settlement agreements and asset or stock sale agreements in this fashion, as an efficient manner of resolving numerous complex claims and converting them to cash. Applicants state that it would be much less efficient for the creditors to first litigate the allocation of claims among the numerous Enron subsidiaries and then to negotiate individually with counterparties to settle these claims individually. Any settlement or sale proceeds or costs aggregated as a result of a settlement will be allocated among the Enron companies pursuant to the Plan.

*E. Portland General Financing*

Portland General seeks authorization to issue debt with a maturity of less than one year.[5] Portland General requests authorization to issue short-term debt in the form of bank or other institutional borrowings, bid notes, commercial paper or as otherwise necessary to fund short-term capital requirements.

All issuances of short-term debt would not exceed $600 million in aggregate principal amount outstanding (''Short-Term Debt Limit''). In addition, Portland General will not issue any additional short-term debt if Portland General's common stock equity as a percentage of total capitalization is less than 30%, after giving effect to the issuance. The effective cost of capital on short-term debt will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided that in no event will the effective cost of capital on short-term debt exceed 500 basis points over the London Interbank Offered Rate (''LIBOR'').

Portland General further commits that it would not issue short-term debt under the authorization requested unless, at the time of issuance, (i) the security to be issued, if rated, is rated investment grade, and (ii) all outstanding Portland General securities that are rated are rated investment grade, in each case by at least one nationally recognized statistical rating organization.[6] Applicants request that the Commission reserve jurisdiction over the issuance by Portland General of any short-term debt that is rated below investment grade pending completion of the record.

Portland General has two revolving credit facilities with a group of commercial banks totaling $150 million, consisting of a $50 million 364-day facility which expired on May 23, 2005, and a $100 million three-year facility. Portland General plans to enter into a new unsecured five-year $400 million revolving credit agreement to replace the 364-day facility and the three-year facility, which will be terminated on execution of the new facility. The facility would allow Portland General to issue letters of credit, in addition to borrowings, totaling up to the full amount of the facility, and will contain a ''term out'' option that would allow Portland General to extend the final maturity of the facility prior to its initial and each subsequent expiration date for up to an additional year. The new credit facility would be subject to approval by the OPUC. Portland General requests authorization to borrow or issue letters of credit in the aggregate amount of $400 million under the new facility.

Portland General also seeks authorization to issue additional short-term debt generally in the form of, but not limited to, borrowings from banks and other institutions, commercial paper and bid notes or as otherwise may be necessary to replace, extend, rearrange, modify or supplement the facilities described above. Portland General may sell commercial paper, from time to time, in established U.S., Canadian or European commercial paper markets.

Within the financing parameters described above, Portland General also may establish bank lines of credit, directly or indirectly through one or more financing subsidiaries. Loans under these lines will have maturities of less than one year from the date of each borrowing. Alternatively, if the notional maturity of short-term debt is greater than 364 days, the debt security will include put options at appropriate points in time to cause the security to be accounted for as a current liability under US generally accepted accounting principles. Portland General also proposes to engage in other types of short-term financing generally available to borrowers with comparable credit ratings and credit profile, as it may deem appropriate in light of its needs and market conditions at the time of issuance, provided that any such issuance of short-term debt complies with the financing parameters included in this Application.

*F. Foreign Assets*

Enron's foreign pipeline, gas and electricity distribution and power generation assets typically have FUCO status or exempt wholesale generator (''EWG'') status at the project level. Many of the foreign assets have been transferred into Prisma which also is a FUCO. As noted above, the shares of Prisma may be issued to creditors in connection with the Plan or Prisma may

[5] Portland General is subject to the jurisdiction of the Oregon Public Utility Commission (''OPUC'') with respect to the issuances and sales of securities with maturities of one year or longer. OPUC approval also is required for Portland General to enter into an agreement under which securities are issued for less than one year if the agreement itself has a maturity of more than one year. The issuance of securities by Portland General to finance the utility's business with a maturity of one year or longer would be conducted under OPUC authorization and in reliance on the exemption provided by rule 52(a) under the Act.

[6] The term ''nationally recognized statistical rating organization'' shall have the same meaning as in rule 15c3–1(c)(2)(vi)(F), 17 CFR 240.15c3–1(c)(2)(vi)(F). Investment grade long-term debt is denoted by the Standard & Poor's ratings of AAA, AA, A and BBB, with some ratings also including a + or − to further differentiate creditworthiness. Moody's Investors Service uses the ratings Aaa, Aa, A and Baa to denote investment grade long-term debt.

be sold and the proceeds will then be distributed to creditors.

Some Enron group companies, however, are related to the business of Prisma, but may not qualify for FUCO status because they may not directly or indirectly own or operate foreign utility assets. Such companies may, for example, have loans outstanding to a FUCO or a subsidiary of a FUCO. In other cases, such as settlements or asset reorganizations, the securities of a FUCO may be acquired by Enron group companies. Accordingly, Enron and its subsidiaries that are not FUCOs or subsidiaries of FUCOs, excluding Portland General, request authorization under section 33(c) and rule 53(c) under that Act, to issue new securities for the purpose of financing FUCOs and to acquire FUCO securities in connection with financings, settlements and reorganizations. Such authorization would be limited to an aggregate amount of $100 million in new FUCO investments during the Authorization Period.[7] Authorization to restructure (*e.g.,* to amend the terms of existing financings) or refinance existing FUCO investments would not be limited. In addition, investments made by Prisma and its direct and indirect subsidiaries in foreign energy-related businesses that are not supported by an Enron guarantee would be exempt under section 33 and not subject to the limit stated above. Such investments may be made from time-to-time to improve the value of the assets held by Prisma and to acquire the interests of unaffiliated partners in certain foreign utility projects in order to simplify the ownership of such projects.

FUCO financings would be conducted principally to maintain and preserve the value of the foreign assets in the bankruptcy estate and not to develop significant new projects. The proposed FUCO investments, financings and reorganizations would not adversely affect Enron's financial condition and would be entered into consistent with the Plan, as necessary to support the FUCO businesses pending their disposition under the Plan. Portland General will not provide any financing or guarantees in connection with the FUCO-related transactions proposed.

*G. The Sale of Nonutility Companies*

The Reorganized Debtors, non-debtor associates, and certain other related companies have completed a number of significant asset sales as part of the process of simplifying the Enron group and assembling assets for eventual distribution to creditors. These asset sales have been completed by numerous Reorganized Debtors, non-debtor associates, and other related companies, and the sale proceeds have, in certain instances, been used to repay indebtedness or other claims, and may be further subjected to a variety of claims from related and unrelated parties.

In most cases, the sale transactions are for all cash consideration. Some sales may involve the acquisition of a security from the purchaser or the company being sold. A security would be accepted only when the transaction could not otherwise be negotiated for all cash consideration. For example, a purchaser may insist on an escrow of part of the sales proceeds to cover claims that may arise post-sale under an indemnification agreement. To give the seller a secured interest in the escrow, the purchaser would issue a note to the seller in the amount of the escrow with a right to set off amounts due under the note for allowed claims under the indemnification agreement. For the most part, the Reorganized Debtors would seek to convert securities into cash. Any security not converted into cash by the time the assets of the estates are distributed to creditors would reside in the Remaining Assets Trust,[8] and creditors would receive an interest in that liquidating trust.

Indemnifications and guarantees by and between companies in the Enron group also may be part of the sale of nonutility assets, nonutility securities or settlements on claims with third parties. In the case of sales to third parties, Enron would seek to limit indemnifications to no more than the amount of the sale proceeds received by the seller. Applicants request indemnification and guarantee authority to provide them with the flexibility to manage the process of selling the assets of the estates in a manner that would maximize their value.

Applicants seek authorization for transactions involving the acquisition of securities, indemnifications and guarantees described above as they would occur in the context of the sale of any Enron group company (except Portland General) if such sale is in the ordinary course of business of a reorganized debtor and in furtherance of the Plan. In addition, litigation with respect to claims may result in an Enron group company receiving the securities of a party to the litigation as a settlement or a judgment. Applicants request authorization to acquire securities in this context also, where the litigation is in the ordinary course of business of a Reorganized Debtor. Applicants assert that the transactions proposed would not involve indemnifications or guarantees made by Portland General and would not have an adverse impact on that company.

*H. Dividends Out of Capital or Unearned Surplus*

Applicants request general relief from the dividend and acquisition, retirement and redemption restrictions under section 12(c) of the Act and the rules under the Act as necessary to continue the administration of the Plan. The relief requested also would apply to partnership distributions to the extent they are from capital and subject to the restrictions under the Act. According to the Applicants, the proposed relief is necessary to reorganize and reallocate value in the Enron group that will ultimately be distributed to creditors. The relief requested would not apply to any transaction involving Portland General.

The Applicants seek an exception from the dividend restrictions under the Act as applied to all nonutility subsidiaries in the Enron group subject to the conditions noted above. The Applicants represent that they will pay dividends and distributions in accordance with applicable law and will comply with the terms of any agreements that restrict the amount and timing of distribution to investors. Applicants request authorization for the Enron group companies, other than Portland General, to acquire, retire and redeem securities that they have issued.[9]

[7] As of June 30, 2005, no new investments in existing FUCOs had been made.

[8] As defined more completely under the Plan, the Remaining Assets Trust is one or more entities formed on or after the Confirmation Date (*i.e.,* July 15, 2004) for the benefit of holders of certain allowed claims to hold assets of the Reorganized Debtors other than cash, certain litigation trust claims, Plan Securities and certain other claims and causes of action.

[9] As of December 31, 2004, Portland General had 219,727 shares of its preferred 7.75% Series Cumulative Preferred Stock (no par value) outstanding. The preferred stock is mandatorily redeemable and is classified as long-term debt in accordance with SFAS No. 150. The preferred stock is redeemable by operation of a sinking fund that requires the annual redemption of 15,000 shares at $100 per share beginning in 2002, with all remaining shares to be redeemed by sinking fund in 2007. At its option, Portland General may redeem, through the sinking fund, an additional 15,000 shares each year. Open market share purchases can be applied towards the annual redemption requirement. During 2004, Portland General redeemed 30,000 shares, consisting of 15,000 shares for the annual sinking fund requirement and 15,000 additional shares acquired at its option. Should Portland General exercise its right to redeem any of its preferred stock, it would rely on the exemption under rule 42 for the acquisition of stock from unaffiliated entities.

*I. Simplifying Complex Corporate Structure and Dissolving Existing Subsidiaries*

Enron continues to restructure many of its subsidiaries in conjunction with administering the Plan. Enron also is liquidating or divesting approximately 1,000 surplus legal entities and businesses in which it no longer intends to engage. Eventually, substantially all of the Reorganized Debtors, including Enron, will be liquidated or divested. Applicants state that reorganizing complex structures may involve the creation of new holding companies and liquidating or other trusts formed for the benefit of the Reorganized Debtors' estates and their creditors. In the context of restructuring assets and entities, Enron group companies may receive distributions or other returns of capital and may make capital contributions, share exchanges, guarantees, indemnifications, and other transactions to move companies, assets and liabilities within the Enron group as necessary to implement a less complex and more sound corporate structure and as necessary to implement settlements with third parties or to resolve or recover claims. For example, a Reorganized Debtor with no cash, but a valuable claim against a third party, may borrow from an associate company (other than Portland General) to fund litigation to resolve or recover a claim. Contracts may be assigned from one subsidiary to another Enron group company or a third party. The assignment of contracts that have value among Enron group companies could be viewed as a dividend or capital contribution.

Portland General is assisting in the sale of the subsidiaries of PGH II, Inc. (''PGH II''), a nonutility Enron subsidiary and, in the case of the sale of substantially all of the assets of the subsidiary, in the winding up and dissolution of the subsidiary. PGH II is a holding company with subsidiaries engaged in telecommunications, district heating and cooling, and real estate infrastructure development and construction. PGH II and its subsidiaries have been managed historically by Portland General. With the exception of the transactions related to these sales, Portland General and its subsidiaries would not be involved in any of the proposed reorganization and simplification transactions.

Applicants seek Commission authorization to restructure, rationalize and simplify or dissolve, as necessary, all of their nonutility businesses and to implement settlements (which may involve transactions as described above regarding substantially all of their remaining direct and indirect assets) as necessary to simplify and restructure their businesses in furtherance of the Plan. As previously requested, Applicants seek authorization to acquire, redeem and retire securities and to pay dividends out of capital and unearned surplus provided that such transactions are consistent with applicable corporate or partnership law and any applicable financing covenants. Applicants also seek authorization to form, merge, reincorporate, dissolve, liquidate or otherwise extinguish companies. Any newly formed entity would engage only in businesses that the Enron group continues to engage in throughout the administration of the Plan. Further, Applicants seek authorization to restructure, forgive or capitalize loans and other obligations and to change the terms of outstanding nonutility company securities held by other Enron group companies for the purpose of facilitating settlements with creditors, simplifying the business of the group and maximizing the value of the Reorganized Debtors' estates.

*J. Affiliate Transactions*

Applicants request authorization to engage in certain affiliate transactions described below. Portland General has entered into a master service agreement (''MSA'') with certain affiliates, including Enron. The MSA allows Portland General to provide affiliates with the following general types of services: printing and copying, mail services, purchasing, computer hardware and software support, human resources support, library services, tax and legal services, accounting services, business analysis, product development, finance and treasury support, and construction and engineering services. The MSA also allows Enron to provide Portland General with the following services: executive oversight, general governance, financial services, human resource support, legal services, governmental affairs service, and public relations and marketing services. Portland General would provide services to affiliates at cost under the MSA and affiliate services provided to Portland General also would be priced at cost, in accordance with section 13(b) of the Act. If cost based pricing of particular services provided under the MSA would conflict with the affiliate transaction pricing rules of the OPUC, Portland General and Enron would refrain from providing or requesting such services, unless they have first obtained specific authorization from the OPUC to use cost based pricing for such services.

During 2004 Enron provided certain employee health and welfare benefits, 401(k) retirement savings plan, and insurance coverages to Portland General under the MSA that were directly charged to Portland General based upon Enron's cost for those benefits and coverages. In 2004, Enron passed through to Portland General approximately $25 million for medical/dental benefits and retirement savings plan matching and $3 million for insurance coverage. Beginning on January 1, 2005, administration of the medical/dental benefit and retirement savings plan was returned to Portland General from Enron. As a result, Enron no longer passes through costs to Portland General for these services. However, Enron has continued to incur costs related to the resolution of issues associated with the bankruptcy and litigation with regard to certain of the employee benefit plans. Enron bills Portland General for a portion of these costs.

Portland General provides certain administrative services to Enron's subsidiary Portland General Holdings, Inc. (''PGH'') and its subsidiaries under the MSA that are allocated or directly charged to PGH and its subsidiaries based upon the cost for those services. The cost of these services for the year 2004 in the aggregate was approximately $1 million.

The nonutility subsidiaries in the Enron group also are engaged in providing services to one another. Prisma, Enron and certain associate companies have entered into ancillary agreements, including Transition Services Agreements, a tax matters agreement, and a Cross License Agreement.[10] The employees of Enron and its associates who have been supervising and managing the Prisma Assets since December 2001, became employees of a subsidiary of Prisma effective on or about July 31, 2003. As approved by the Bankruptcy Court, Enron and its associates entered into four separate Transition Services Agreements pursuant to which such employees continue to supervise and manage the Prisma Assets and other international assets and interests owned or operated by Enron and its associates. These ancillary agreements, together with the Prisma Contribution and Separation Agreement,[11] govern the

[10] The Cross License Agreement between Enron and Prisma permits each entity to continue to use certain intellectual property such as computer software necessary to operate and maintain systems after the separation of Prisma from the Enron group.

[11] On August 31, 2004, Enron, certain of its debtor affiliates and Prisma executed a Contribution and Separation Agreement, which provided for the

relationship between Prisma and Enron, provide for the performance of certain interim services, and define other rights and obligations until the distribution of shares of capital stock of Prisma pursuant to the Plan or the sale of the stock to a third party.

Applicants, other than Enron, that are providing goods and services at terms other than cost to associate companies, other than Portland General, also seek an exemption under section 13(b) from the at cost rules under the Act through the Authorization Period to the extent that rule 91(d) does not exempt such transactions. Applicants state that these transactions are in the ordinary course of business and would not involve Portland General.

*K. Tax Allocation Agreements*

The Omnibus Order authorized Enron to enter into an agreement with Portland General for the payment and allocation of tax liabilities on a consolidated group basis. Enron entered into such an agreement whereby Portland General is responsible for the amount of income tax that Portland General would have paid on a ''stand alone'' basis, and Enron is obligated to make payments to Portland General as compensation for the use of Portland General's losses and/or credits to the extent that such losses and/or credits have reduced the consolidated income tax liability. It is contemplated that the existing tax allocation agreement with Portland General may be amended to provide that Enron would pay Portland General for certain Oregon state tax credits generated by Portland General but not used on the consolidated Oregon tax return. Enron and Portland General also seek authorization to amend the Portland General tax allocation agreement accordingly.

Under the agreement, Enron is responsible for, among other things, the preparation and filing of all required consolidated returns on behalf of Portland General and its subsidiaries, making elections and adopting accounting methods, filing claims for refunds or credits and managing audits and other administrative proceedings conducted by the taxing authorities. Enron and Portland General will continue to be parties to this tax sharing agreement, or a new agreement on similar terms, until Enron and Portland General no longer file consolidated tax returns. It is intended that Enron and Portland General will file consolidated tax returns until Enron no longer owns 80% of the capital stock of Portland General. Applicants state that the consolidated tax filing agreement does not technically comply with rule 45(c) under the Act because Enron shares in the tax savings from the consolidation ratably with Portland General. In particular, to the extent Enron's losses or tax credits reduce the consolidated tax liability, Enron would retain the resulting tax savings. Enron and Portland General seek authorization to continue to perform under such agreement or a new agreement under similar terms. Under such agreement, the consolidated tax liability for each taxable period would be allocated to Enron, Portland General and its subsidiaries in proportion to the corporate taxable income of each company, provided that the tax apportioned to any company shall not exceed the separate return tax of such company.

Enron also has entered into a tax matters agreement with Prisma. Applicants state that the Prisma tax matters agreement is not an agreement to file a consolidated tax return or to share a consolidated tax liability within the meaning of rule 45(c), but rather it is an agreement for Enron to prepare and file all required returns that relate to Prisma and its subsidiaries and for Prisma to cooperate therewith. In addition, Prisma agrees to make dividend distributions to its shareholders in certain minimum amounts (to the extent of available cash) for so long as Enron or any affiliate or the Disputed Claims Reserve [12] is required to include amounts in income for federal income tax purposes in respect of the ownership of Prisma shares.

*L. Form U–6B–2*

The Applicants also seek authorization to report any debt issued under rule 52 on the Rule 24 report for the corresponding quarter *in lieu* of filing a form U–6B–2.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5–3663 Filed 7–11–05; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application of AMETEK, Inc. To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the Pacific Exchange, Inc. File No. 1–12981

July 6, 2005.

On June 21, 2005, AMETEK, Inc., a Delaware corporation, (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value (''Security''), from listing and registration on the Pacific Exchange, Inc., (''PCX'').

On April 27, 2005, the Board of Directors (''Board'') of the Issuer approved resolutions to withdraw the Security from listing and registration on PCX. The Board stated that the following reasons factored into its decision to withdraw the Security from PCX: (i) The Security is currently listed on the New York Stock Exchange, Inc. (''NYSE'') and the Issuer will maintain the listing; and (ii) the low volume of trading in the Security on PCX does not justify the expense and administrative time associated with remaining listed, particularly in light of the requirements to address PCX's rules relating to corporate governance in addition to NYSE's corporate governance rules.

The Issuer stated in its application that it has complied with applicable rules of PCX by complying with all applicable laws in effect in the State of Delaware, the state in which the Issuer is incorporated, and by providing PCX with the required documents governing the withdrawal of securities from listing and registration on PCX.

The Issuer's application relates solely to the withdrawal of the Security from listing on PCX, and shall not affect its continued listing on NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before July 29, 2005, comment on the facts bearing upon whether the

contribution of certain assets to Prisma in exchange for Prisma shares. The form of the Contribution and Separation Agreement had been previously approved by the Bankruptcy Court. The contributed assets included equity interests in international energy infrastructure projects, inter-company receivables relating to these assets and infrastructure (telephones, computers, video conferencing equipment, *etc.*) in use by Prisma at the time of the execution of the agreement and required by Prisma to effectively own and manage the assets.

[12] The Disputed Claims Reserves, as more fully defined in the Plan, are trusts/escrows held by the disbursing agent for the benefit of each holder of a disputed claim and an allowed claim, consisting of cash, Plan securities, operating trust interests, other trust interests and any dividends, gains or income attributable thereto. The Disbursing Agent, also defined in the Plan, is the agent appointed by the Bankruptcy Court to effectuate distributions pursuant to the Plan.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

*Electronic Comments*

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–12981 or;

*Paper Comments*

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–12981. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 05–13604 Filed 7–11–05; 8:45 am]

**BILLING CODE 8010–01–M**

[4] 17 CFR 200.30–3(a)(1).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51965; File No. SR–Amex–2005–070]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Revising Various Implementation Dates for the ANTE System

July 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 24, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. On June 29, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Amex filed the proposal, as amended, as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(6) thereunder.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend (i) Rule 900–ANTE to provide a revised date for the completion of the implementation of the ANTE System for all options classes; and (ii) Rule 935–ANTE, Commentary .01 to establish a revised date for increased floor broker functionality in the ANTE System. The text of the proposed rule change is available on the Amex's Web site (*http://www.amex.com*), at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Revised Implementation Date—Amex Rule 900–ANTE

On May 20, 2004, the Commission approved the Amex's proposal to implement a new options trading platform known as the Amex New Trading Environment (''ANTE''). On May 25, 2004, the Amex began rolling out the ANTE System on its trading floor on a specialist's post-by-specialist's post basis. At that time, it was anticipated that the roll out would be completed by the end of the second quarter of 2005. It was also anticipated that the three hundred most actively traded option classes would be trading on the ANTE System by January 31, 2005. The implementation date for the three hundred most actively traded option classes was subsequently extended to April 30, 2005.[6] The Amex has rolled out the ANTE System to all its option classes except three—the Japan Index (''JPN''), the Nasdaq 100 Index (''NDX'') and the Mini Nasdaq Index (''MNX''). The Exchange represents that there are specific reasons why these products have not been rolled out on the ANTE System. The specialists in these products are concerned that the theoretical price calculator provided by the ANTE System may not accurately price the options on these indexes. With respect to JPN, a software release giving the specialist greater pricing functionality is expected to be available by July 18, 2005. With respect to the MNX and the NDX, the specialist is waiting for his own theoretical index price calculator to be installed. The Exchange expects that the MNX/NDX specialist will have its proprietary calculator in place by August 31, 2005.

The Amex is now proposing to further revise its implementation schedule to provide that the remaining three option classes will be on the ANTE System by August 31, 2005. Maintaining two

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 clarified that the proposed rule change was being submitted under Section 19(b)(3)(A)(iii) of the Act and Rule 19b–4(f)(6) thereunder and requested that the Commission waive the five-day pre-filing and 30-day operative delay requirements of Rule 19b–4(f)(6).

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

[6] *See* Securities Exchange Act Release No. 51642 (May 2, 2005), 70 FR 24130 (May 6, 2005).

systems for the trading of options—the legacy system (XTOPS, AODB and Auto-Ex) and ANTE—is costly. Consequently, the Exchange submits that it is working diligently to have all option classes on the ANTE System by August 31, 2005, so that it can retire its legacy systems.

Increased Floor Broker Functionality—Amex Rule 935–ANTE

Amex Rule 935–ANTE (b) provides for the post trade allocation of contracts executed as the result of the submission of orders to trade with orders in the ANTE Central Book. If more than one ANTE Participant [7] and/or a floor broker representing a customer order submits an order to trade with an order in the ANTE Central book within a period not to exceed five seconds after the initial ANTE Participant has submitted its order, all those ANTE Participants and the floor broker's customer will be entitled to participate in the allocation of any executed contracts. The Exchange represents that the ANTE System is currently unable to provide the functionality necessary for floor brokers representing customer orders in the trading crowd the ability to directly participate in the post trade allocation of orders taken off the Central Book. Commentary .01 to Amex Rule 935–ANTE provides a temporary methodology for the specialist to disengage the post trading allocation system in a specific series, which allows the floor broker to alert the specialist within the five-second timeframe whenever his customer wants to participate in post trade allocation, and allows the specialist to provide for the customer's participation in post trade allocation when appropriate. The Commission approved the procedures set forth in Commentary .01 to Amex Rule 935–ANTE as a ''reasonable, temporary solution.'' [8] Commentary .01 to Amex Rule 935–ANTE also provides that the ANTE System will give floor brokers greater functionality accessing the Central Book on March 31, 2005 or such other date as established by the Exchange and submitted to the Commission pursuant to Section 19(b) of the Act. The Exchange subsequently established June 30, 2005 as the date the increased functionality will be available in the ANTE System. Due to a delay in the roll out of the increased floor broker functionality, the Exchange now proposes to establish August 31, 2005 as the date set forth in Commentary .01 to Amex Rule 935–ANTE for such increased functionality.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is designed to prohibit unfair discrimination between customers, issuers, brokers, or dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has designated the proposed rule change, as amended, as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12] The Amex represents that the foregoing rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, does not become operative for 30-days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay period for ''non-controversial'' proposals and make the proposed rule change, as amended, effective and operative upon filing.

The Commission has determined to waive the five-day pre-filing requirement and the 30-day operative delay period.[13] The Commission notes that the Amex has represented that the theoretical price calculators for the final three options classes are not installed and/or functioning properly and that it has not yet implemented the functionality for floor brokers representing customer orders. The Commission believes that extending the deadline for implementing Amex Rules 900– and 935–ANTE by two months should afford Amex the time needed to install and/or fix the theoretical price calculators and to implement the floor broker customer order functionality. Furthermore, the Commission believes that it is in the interest of investors and the public to delay implementation of the ANTE system until all of the components are in place and functioning properly. Therefore, the foregoing rule change has become immediately effective and operative upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

At any time within 60-days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[16]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[7] Amex Rule 900–ANTE (b)(45) defines ANTE Participant as the specialist and/or registered options trader(s) assigned to trade a specific options class on the ANTE System.

[8] *See* Securities Exchange Act Release No. 49747 (May 20, 2004), 69 FR 30344 (May 27, 2004).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 29, 2005, the date on which the Amex submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

*Electronic Comments*

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–070 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–070. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at Amex's Office of the Secretary. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–070 and should be submitted on or before August 2, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E5–3684 Filed 7–11–05; 8:45 am]

**BILLING CODE 8010–01–P**

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51969; File No. SR–CBOE–2005–44]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Obvious Error Rules

July 5, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2005, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Exchange filed the proposed rule change as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to revise its obvious error rules for equity and index options. Below is the text of the proposed rule change. Proposed deletions are in [brackets].

* * * * *

**Chicago Board Options Exchange, Incorporated**

* * * * *

**Rule 6.25 Nullification and Adjustment of Equity Option Transactions**

This Rule governs the nullification and adjustment of transactions involving equity options. Rule 24.16 governs the nullification and adjustment of transactions involving index options and options on ETFs and HOLDRs. Paragraphs (a)(1), and (2) of this Rule have no applicability to trades executed in open outcry.

(a) Trades Subject to Review

A member or person associated with a member may have a trade adjusted or nullified if, in addition to satisfying the procedural requirements of paragraph (b) below, one of the following conditions is satisfied:

(1) No change

(2) No Bid Series: Electronic transactions in series quoted no bid [at a nickel (i.e., $0.05 offer)] will be nullified provided at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid [at a nickel] at the time of execution.

(3)–(5) No change

(b)–(e) No change

* * * * *

**Rule 24.16 Nullification and Adjustment of Index Option Transactions**

This Rule only governs the nullification and adjustment of transactions involving index options and options on ETFs or HLDRs. Rule 6.25 governs the nullification and adjustment of transactions involving equity options. Paragraphs (a)(1), (2), (6) and (7) of this Rule have no applicability to trades executed in open outcry.

(a) Trades Subject to Review

A member or person associated with a member may have a trade adjusted or nullified if, in addition to satisfying the procedural requirements of paragraph (b) below, one of the following conditions is satisfied:

(1)–(6) No change

(7) No Bid Series: Electronic transactions in series quoted no bid [at a nickel (*i.e.,* $0.05 offer)] will be nullified provided at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid [at a nickel] at the time of execution.

(b)–(e) No change

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change*

1. Purpose

The CBOE proposes to revise its obvious error rules with respect to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

equities and indexes (CBOE Rules 6.25 and 24.16, respectively) (''Obvious Error Rules'') to adjust the terms that relate to the nullification of no bid series as set forth in CBOE Rules 6.25(a)(2) and 24.16(a)(7) (together ''No Bid Provisions'').

Under the current No Bid Provisions, electronic transactions in option series quoted no bid at a nickel (*i.e.,* $0.05 offer) are nullified provided at least one strike price below (for calls) or above (for puts) in the same options class is quoted no bid at a nickel at the time of execution. A ''no bid'' option refers to an option where the bid price is $0.00.[4] Series of options quoted no bid are usually deep out-of-the-money series that are perceived as having little if any chance of expiring in-the-money.[5] For this reason, relatively few transactions occur in these series, and those that do are usually the result of a momentary pricing error. In some cases, the pricing error is substantial enough such that other provisions in the Obvious Error Rules become applicable. The Exchange asserts that in many cases though, the No Bid Provisions are the only provisions that would apply to the pricing error.

The proposed rule change would remove the condition set forth in the No Bid Provisions that provides that the option series must be offered at a nickel and instead only require that the option series be quoted no bid. The Exchange states that the reason for this change is that options that are priced at no bid, regardless of the offer, are usually deep out-of-the-money series that are perceived as having little if any chance of expiring in-the-money. This is especially the case when the series below (for calls) or above (for puts) in the same option class similarly is quoted no bid. In this regard, the offer price is irrelevant. Therefore, transactions that are no bid at a dime, for example, are just as likely to be the result of an obvious error as are transactions that are no bid at a nickel when the series below (for calls) or above (for puts) in the same option class similarly is quoted no bid. The Exchange also notes that the text of the No Bid Provisions, as proposed, is substantively identical to Rule 1092(c)(ii)(E) of the Philadelphia Stock Exchange (''Phlx'') Rulebook, which applies to options on stocks, exchange-traded fund shares, and foreign currencies.

[4] When the bid price is $0.00, the offer price is typically $0.05. In this instance, the option typically is referred to as ''no bid at a nickel.''

[5] For example, on July 11th with the underlying stock trading at $21, the JULY 40 calls likely will be quoted no-bid at a nickel.

2. Statutory Basis

The CBOE believes that the filing provides for the nullification of certain trades that result from an inaccurate pricing anomaly. For this reason, and because the same provision has already been approved for the Phlx,[6] the Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and national market system and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The CBOE neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b-4 thereunder.[10] As required under Rule 19b-4(f)(6)(iii),[11] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

[6] *See* Securities Exchange Act Release No. 49785 (May 28, 2004), 69 FR 32090 (June 8, 2004) (Order approving adoption of Phlx Rule 1092(c)(ii)(E)).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b-4(f)(6).

[11] 17 CFR 240.19b-4(f)(6)(iii).

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b-4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In addition, the Exchange has requested that the Commission waive the 30-day operative delay and render the proposed rule change to become operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day operative delay would enable the Exchange to implement the proposal as quickly as possible. In addition, the Commission notes that the proposed No Bid Provisions are substantially identical to Phlx Rule 1092(c)(ii)(E). The Commission does not believe that the proposed rule change raises new regulatory issues. For the reasons stated above, the Commission designates the proposal to become operative immediately.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR-CBOE-2005-44 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9309.

[12] *Id.*

[13] *Id.*

[14] For purposes of waiving the operative date of this proposal only, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–CBOE–2005–44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–44 and should be submitted on or before August 2, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5–3666 Filed 7–11–05; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51967; File No. SR–CHX–2004–25]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to a Prohibition on Using a Layoff Service Unless the Service Provides Required Information to the Exchange

July 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2004, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CHX. On June 7, 2005 and June 27, 2005, the Exchange filed Amendment Nos. 1 [3] and 2 [4] to the proposed rule change, respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Article V, Rule 4 to prohibit Exchange participants, beginning August 1, 2005, from using any communications means to send orders to another market for execution (''layoff service''), unless that layoff service has established a process for providing the Exchange with specific information about the orders and the executions that participants receive. The text of the proposed rule change, as amended, is available on CHX's Web site (*http://www.chx.com/marketreg/proposed rules.htm*), at CHX's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes*

1. Purpose

The Exchange's participants execute trades on the Exchange and on other markets. Most interaction with other markets occurs through electronic systems that are provided either by other markets themselves or by members of those markets. Although the Exchange currently receives execution information about its participants' trading in other markets, the Exchange believes that it could conduct more efficient surveillance of its participants' order-handling activities if it received additional types of information.

This proposal, which would amend the Exchange's rule relating to communications from the trading floor, is designed to provide the Exchange with the layoff service information that it needs to enhance its surveillance programs. Specifically, the proposal would prohibit Exchange participants, beginning August 1, 2005, from using a layoff service to send orders to another market for execution, unless that service (or the participant using the service) has established a process for providing the Exchange with the following specific information: (1) The symbol of the security to be traded; (2) the clearing organization; (3) an order identifier that uniquely identifies the order; (4) the participant recording the order details; (5) the number of shares; (6) the side of the market on which the order is placed; (7) a designation of the order type (*e.g.,* market, limit, stop, stop limit); (8) whether the order is for the account of a customer or for the account of the participant sending the order; (9) whether the order is short or short exempt; (10) any limit price and/or stop price; (11) the date and time of order transmission; (12) the market to which the order was transmitted; (13) the time in force; (14) a designation of the order as held or not held; (15) any special conditions or instructions associated with the order (including any customer do-not-display instructions or all-or-none conditions); (16) any modifications to the details set out in (1) through (15), for all or part of an order or any cancellation of all or part of the order; (17) the date and time of the transmission of any modifications to the order or any cancellation of the order; (18) the date and time of any order expiration; (19) the identification of the party canceling or modifying the order; (20) the transaction price; (21) the number of shares executed; (22) the date and time of execution; (23) settlement instructions; (24) a system-generated time(s) of recording the required information; and (25) any other information that the Exchange may require from time to time.[5] For purposes

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1 dated June 7, 2005. In Amendment No. 1, the Exchange modified the text of the proposed rule change in response to comments by the Commission staff. *See infra* notes 12–16 and accompanying text for a description of items included in Amendment No. 1.

[4] See Amendment No. 2 dated June 27, 2005, replacing the original filing and Amendment No. 1 in their entirety. In Amendment No. 2, the Exchange eliminated the requirement to provide information about the contra party to the execution and made other technical changes to the proposal.

[5] *See* Proposed CHX Article V, Rule 4, Interpretation and Policy .01.

of this proposal, an ''order'' would be defined as any written, oral or electronic instruction to effect a transaction.[6]

Other provisions of the proposal would set out additional requirements that are designed to ensure that the Exchange receives uniformly-presented, useful data.[7] For example, the Exchange proposes that all information be provided on a real-time basis and in an electronic format acceptable to the Exchange.[8] Moreover, each layoff service would be required to synchronize its business clocks with reference to a time source designated by the Exchange and maintain that synchronization following procedures prescribed by the Exchange.[9] The Exchange confirms in another provision that all time references be expressed in terms of hours, minutes, and seconds.[10]

Furthermore, the Exchange confirms that a violation of these new requirements would be considered conduct inconsistent with just and equitable principles of trade, in violation of CHX Article VIII, Rule 7.[11] Therefore, these violations would not be eligible for handling under the Exchange's Minor Rule Violation Plan.

The Exchange submitted Amendment No. 1 to require that participants provide additional information about their layoff activity; [12] to replace references to the Exchange's ''members'' with references to its ''participants,'' reflecting changes in terminology associated with the Exchange's February 2005 demutualization; [13] to require that participants notify the Exchange before using an alternative or additional layoff vendor; [14] and to confirm that these rules would not replace any record retention obligations to which the Exchange's participants would be subject under the Act and the rules thereunder.[15] Other changes proposed in Amendment No. 1 clarify the application of the rule text and make other minor corrections to the text.[16] Amendment No. 2 eliminated one proposed field of data relating to the contra party to an execution and corrected a few typographical errors.[17]

As noted above, the Exchange believes that this proposal would enhance the Exchange's ability to review its members' order-handling activities and to determine their compliance with applicable trading rules. Moreover, the Exchange believes that this proposal is consistent with recommendations made by the independent consultant retained by the Exchange under its recent settlement agreement with the Commission.[18]

2. Statutory Basis

The Exchange believes that the proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[19] Specifically, the CHX believes that the proposal, as amended, is consistent with Section 6(b)(5) of the Act,[20] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by permitting the Exchange to require its participants (or their layoff service providers) to provide the Exchange with data necessary to conduct appropriate surveillance of its participants' trading activities.

*B. Self-Regulatory Organization's Statement of Burden on Competition*

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule changes, or

B. Institute proceedings to determine whether the proposed rule changes should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2004–25 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–CHX–2004–25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the

[6] *See* Proposed CHX Article V, Rule 4, Interpretation and Policy .03.

[7] As an administrative matter, the proposal also would delete CHX Article V, Rule 5, which applied to wires from the Exchange's floor to its branch offices. The Exchange represents that it no longer maintains branch offices and has no purpose for keeping this rule in place.

[8] *See* Proposed CHX Article V, Rule 4, Interpretation and Policy .01.

[9] *See* Proposed CHX Article V, Rule 4, Interpretation and Policy .02.

[10] *See* Proposed CHX Article V, Rule 4, Interpretation and Policy .03.

[11] *See* Proposed CHX Article V, Rule 4, Interpretation and Policy .04.

[12] *See* Amendment No. 1, *supra* note 3. Among other things, the Exchange added requirements that participants confirm whether an order was for the account of a customer or for the account of the participant sending the order to the other market; whether an order was short or short exempt; the market to which the order was transmitted; the identification of any party canceling or modifying the order; the date and time of any order expiration; and the contra party to the execution (if applicable).

[13] *See* Securities Exchange Act Release No. 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005).

[14] *See* Proposed CHX Article V, Rule 4, Interpretation and Policy .05.

[15] *See* Proposed CHX Article V, Rule 4, Interpretation and Policy .06.

[16] For example, the Exchange had mistakenly identified the proposed rule change as occurring in CHX Article VI, not in CHX Article V.

[17] *See* Amendment No. 2, *supra* note 4.

[18] *See* Securities Exchange Act Release No. 48566 (September 30, 2003) (Administrative Proceeding File No. 3–11282), available at *http://www.sec.gov/litigation/admin/34-48566.htm.*

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2004–25 and should be submitted on or before August 2, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5–3665 Filed 7–11–05; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51962; File No. SR–ISE–2005–29]**

## Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Fee Changes

July 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 6, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. On June 20, 2005, ISE filed Amendment No. 1 to the proposed rule change.[3] The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on five narrow-based indexes: the ISE–CCM Homeland Security Index, the ISE Oil & Gas Services Index, the ISE Semiconductors Index, the ISE Gold Index and the ISE Homebuilders Index.[6] The text of the proposed rule change is available on the ISE's Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*), at the principal office of the ISE, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on five narrow-based indexes: the ISE–CCM Homeland Security Index (''HSX''), the ISE Oil & Gas Services Index (''OOG''), the ISE Semiconductors Index (''BYT''), the ISE Gold Index (''HVY''), and the ISE Homebuilders Index (''RUF''). Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on HSX, OOG, BYT, HVY, and RUF.[7] The amount of the execution fee and comparison fee shall be the same for all order types on the Exchange—that is, orders for Public Customers, Market Makers, and Firm Proprietary—and shall be equal to the execution fee and comparison fee currently charged by the Exchange for Market Maker and Firm Proprietary transactions in equity options.[8] The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

Additionally, the Exchange has entered into a license agreement with Cronus Capital Markets in connection with the listing and trading of options on HSX. As with certain other licensed options, the Exchange is adopting a surcharge per contract for trading in these options to defray the licensing costs.[9] The Exchange believes that charging the participants that trade this instrument is the most equitable means of recovering the costs of the license. However, because of competitive pressures in the industry, the Exchange proposes to exclude Public Customer Orders [10] from this surcharge fee. Accordingly, this surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (e.g., Market Maker and Firm Proprietary orders) and shall apply to Linkage Orders [11] under a pilot program that is set to expire on July 31, 2005. Further, since options on HSX, OOG, BYT, HVY, and RUF are not multiply-listed, the Payment for Order Flow fee shall not apply.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] which requires that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

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[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made a technical change to the text of Exhibit 5 (ISE's Schedule of Fees) and added footnote 6 to this rule filing. The correction to Exhibit 5 does not affect the fees for transactions in options on the five narrow-based indexes that are the subject of this filing, but only corrects Exhibit 5 to remove asterisks between the Payment for Order Flow section under Execution Fees and the Comparison Fee section, since no rule text has been omitted between those two sections.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] The Exchange represents that the following five narrow-based indexes, ISE–CCM Homeland Security Index, the ISE Oil & Gas Services Index, the ISE Semiconductors Index, the ISE Gold Index and the ISE Homebuilders Index, meet the standards of ISE Rule 2002(b), which allows the ISE to begin trading these products by filing Form 19b–4(e) at least five business days after commencement of trading these new products pursuant to Rule 19b–4(e) of the Act. Accordingly, ISE filed Form 19b–4(e) with the Commission on June 13, 2005.

[7] The Exchange represents that these fees will be charged only to Exchange members.

[8] The execution fee is currently between $.21 and $.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently $.03 per contract side.

[9] The Commission notes the proposed fee is five (5) cents per contract/side.

[10] Public Customer Order is defined in ISE Rule 100(a)(33) as an order for the account of a Public Customer. Public Customer is defined in ISE Rule 100(a)(32) as a person that is not a broker or dealer in securities.

[11] *See* ISE Rule 1900(10).

[12] 15 U.S.C. 78f(b)(4).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3) of the Act [13] and Rule 19b–4(f)(2) [14] thereunder. At any time within 60 days of the filing of such amended proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2005–29 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–ISE–2005–29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE.All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–29 and should be submitted by August 2, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5–3664 Filed 7–11–05; 8:45 am]

**BILLING CODE 8010–01–P**

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 19b–4(f)(2).

[15] The effective date of the original proposed rule is June 6, 2005. The effective date of Amendment No. 1 is June 20, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 20, 2005, the date on which the ISE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51968; File No. SR–ISE–2004–33]**

## Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Facilitation of Complex Orders

July 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2004, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the ISE. On December 14, 2004, the ISE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The ISE proposes to amend ISE Rule 716, ''Block and Solicited Trades,'' to allow Electronic Access Members (''EAMs'') to use the ISE's Facilitation Mechanism to facilitate block-sized complex orders at a net price. The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

Rule 716. Block and Solicited Trades

* * * * *

Supplementary Material to Rule 716

* * * * *

*.04 Complex Orders. Electronic Access Members may use the Facilitation Mechanism according to paragraph (d) of this Rule 716 to facilitate block-size complex orders (as defined in Rule 722) at a net price. Members may enter Indications for complex orders at net prices, and bids and offers for complex orders will participate in the execution of an order being facilitated as provided in paragraph (d) of this Rule 716. With respect to bids and offers for the individual legs of a complex order entered into the Facilitation Mechanism, the priority rules for complex orders contained in Rule 722(b)(2) will continue to be applicable. If an improved net price for the complex order being facilitated can be achieved from bids and offers for the individual legs of the complex order in the Exchange's auction market, the order being facilitated will receive an execution at the better net price.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Amendment No. 1 revises the text of the proposal to refer to ''complex orders'' rather than ''Complex Orders.'' The use of the lower case letters in the term ''complex orders'' is consistent with the ISE's existing rules.

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to extend the ISE's Facilitation Mechanism to the execution of complex orders. ISE Rule 722(a) defines a ''complex order'' as a multi-legged order that meets one of nine specified criteria. ISE Rule 716(d) describes the Facilitation Mechanism as a process by which EAMs can seek to provide liquidity to their block-sized Public Customer orders.

The Facilitation Mechanism permits an EAM to enter an order of at least 50 contracts if the entering EAM is willing to trade against (facilitate) that order. The ISE then sends a broadcast message to its ''crowd,'' giving them an opportunity to participate in the trade.[4] After a 10-second exposure period, the ISE executes the trade pursuant to the parameters specified in ISE Rule 716(d)(4). The Facilitation Mechanism would handle complex orders in the same manner. An EAM would be able to enter a complex order into the mechanism at a net price. Each leg of the order would need to be for at least 50 contracts. The order will be broadcast to the ISE crowd for 10 seconds and then executed pursuant to the parameters in ISE Rule 716(d)(4).

With respect to bids and offers for the individual legs of a complex order entered into the Facilitation Mechanism, the priority rules for complex orders contained in ISE Rule 722(b)(2) will continue to be applicable. If an improved net price for the complex order being facilitated can be achieved from bids and offers for the individual legs of the complex order in the Exchange's auction market, the order being facilitated will receive an execution at the better net price.

2. Statutory Basis

According to the ISE, the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act[5] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes the proposed rule change will encourage ISE members to provide greater liquidity to their customers with respect to complex orders, while also providing opportunities for all members to interact with this order flow.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the ISE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2005–33 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–ISE–2005–33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–33 and should be submitted on or before August 2, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5–3667 Filed 7–11–05; 8:45 am]

**BILLING CODE 8010–01–P**

[4] ISE Rule 722(b) defines ''crowd'' as all market makers in the options class and other ISE members who have proprietary orders at the inside bid or offer in that series. The ISE has extended this definition to include all ISE members. *See* Securities Exchange Act Release No. 51666 (May 9, 2005), 70 FR 25631 (May 13, 2005) (File No. SR–ISE–2003–07).

[5] 15 U.S.C. 78(f)(b)(5).

[6] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51970; File No. SR–NASD–2004–131]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto Relating to the Listing and Trading of Leveraged Index Return Notes Linked to the Nikkei 225 Index

July 5, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. On March 21, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] On March 31, 2005, Nasdaq filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to list and trade Leveraged Index Return Notes Linked to the Nikkei 225 Index (''Notes'') issued by Merrill Lynch & Co., Inc. (''Merrill Lynch'').

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq proposes to list and trade the Notes. The Notes provide for a return based upon the Nikkei 225 Index (''Index'').

The Index

The Index is a stock index calculated, published and disseminated by Nihon Keizai Shimbun, Inc. (''NKS''),[5] which measures the composite price performance of selected Japanese stocks. The Index is currently based on 225 common stocks traded on the Tokyo Stock Exchange (''TSE'') and represents a broad cross-section of Japanese industry. All 225 underlying stocks are listed in the First Section of the TSE and are, therefore, among the most actively traded stocks on the TSE. Futures and options contracts on the Index are traded on the Singapore International Monetary Exchange, the Osaka Securities Exchange, and the Chicago Mercantile Exchange.

The Index is a modified, price-weighted index, which means a component stock's weight in the Index is based on its price per share rather than total market capitalization of the issuer. NKS calculates the Index by multiplying the per share price of each component by the corresponding weighting factor for that component (a ''Weight Factor''), calculating the sum of all these products and dividing that sum by a divisor. The divisor, initially set on May 16, 1949 at 225, was 22.999 as of August 19, 2004, and is subject to periodic adjustments as set forth below. Each Weight Factor is computed by dividing ¥50 by the par value of the relevant component, so that the share price of each component when multiplied by its Weight Factor corresponds to a share price based on a uniform par value of ¥50. Each Weight Factor represents the number of shares of the related component that are included in one trading unit of the Index. The stock prices used in the calculation of the Index are those reported by a primary market for the components, which is currently the TSE. The level of the Index is calculated once per minute during TSE trading hours. The value of the Index is readily accessible by U.S. investors at the following Web sites: *http://www.nni.nikkei.co.jp* (the identity of the individual Index components can also be accessed from this site) and *http://www.bloomberg.com*. As noted below, because of the time difference between Tokyo and New York, the closing level of the Index on a trading day will generally be available in the United States by the opening of business on the same calendar day.

In order to maintain continuity in the level of the Index in the event of certain changes due to non-market factors affecting the components, such as the addition or deletion of stocks, substitution of stocks, stock dividends, stock splits or distributions of assets to stockholders, the divisor used in calculating the Index is adjusted in a manner designed to prevent any instantaneous change or discontinuity in the level of the Index. The divisor remains at the new value until a further adjustment is necessary as the result of another change. As a result of each change affecting any component, the divisor is adjusted in such a way that the sum of all share prices immediately after the change multiplied by the applicable Weight Factor and divided by the new divisor, *i.e.*, the level of the Index immediately after the change, will equal the level of the Index immediately prior to the change.

Components may be deleted or added by NKS. However, to maintain continuity in the Index, the policy of NKS is generally not to alter the composition of the Index except when a component is deleted in accordance with the following criteria. Any stock becoming ineligible for listing in the First Section of the TSE due to any of the following reasons will be deleted from the Index: Bankruptcy of the issuer, merger of the issuer into, or acquisition of the issuer by, another company, delisting of the stock or transfer of the stock to the ''Seiri-Post'' because of excess debt of the issuer or because of any other reason, or transfer of the stock to the Second Section of the TSE. Upon deletion of a stock from the Index, NKS will select, in accordance with certain criteria established by it, a replacement for the deleted component.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq provided additional details regarding the proposed index linked notes and the Index.

[4] In Amendment No. 2, Nasdaq set forth the standards that must be continuously maintained for Nasdaq not to commence delisting or removal proceedings with respect to the Notes.

[5] Founded in 1876, NKS is a well-known provider of business information in Japan. It publishes several newspapers, including a large business daily, The Nihon Keizai Shimbun, and is also reportedly involved in a range of broadcasting and industrial activities. The Notes are not sponsored, endorsed, sold or promoted by NKS. NKS has no obligation to take the needs of Merrill Lynch or the holder of the Notes into consideration in determining, composing, or calculating the Nikkei. NKS is not responsible for, and has not participated in the determination of the timing of, prices for, or quantities of, the Notes to be issued or in the determination or calculation of the equation by which the Notes are to be settled in cash. NKS has no obligation or liability in connection with the administration or marketing of the Notes. NKS is not affiliated with a securities broker or dealer.

In an exceptional case, a newly listed stock in the First Section of the TSE that is recognized by NKS to be representative of a market may be added to the Index. As a result, an existing component with low trading volume and not representative of a market will be deleted.

As of August 19, 2004, the average daily trading volume of an average Index component was approximately 2.95 million shares. As of the same date, the market capitalization of the components ranged from approximately 14.8 trillion yen to 28 billion yen. These figures correspond approximately to 136.5 billion U.S. dollars and 257 million U.S. dollars.

The Index is composed of 225 securities and is broad-based. As of August 19, 2004, the highest-weighted stock in the Index had the weight of 3.106%; all other components had lower weights. The top five stocks in the Index had the cumulative weight of approximately 13.474%.

The TSE is one of the world's largest securities exchanges in terms of market capitalization. Trading hours are currently from 9 a.m. to 11 a.m. and from 12:30 p.m. to 3 p.m., Tokyo time, Monday through Friday. Due to time zone difference, on any normal trading day the TSE will close prior to the opening of business in New York City on the same calendar day. Therefore, the closing level of the Index on a trading day will generally be available in the United States by the opening of business on the same calendar day.[6]

The TSE has adopted certain measures, including daily price floors and ceilings on individual stocks, intended to prevent any extreme short-term price fluctuations resulting from order imbalances. In general, any stock listed on the TSE cannot be traded at a price lower than the applicable price floor or higher than the applicable price ceiling. These price floors and ceilings are expressed in absolute Japanese yen, rather than percentage limits based on the closing price of the stock on the previous trading day. In addition, when there is a major order imbalance in a listed stock, the TSE posts a ''special bid quote'' or a ''special asked quote'' for that stock at a specified higher or lower price level than the stock's last sale price in order to solicit counter-orders and balance supply and demand for the stock. The TSE may suspend the trading of individual stocks in certain limited and extraordinary circumstances, including, for example, unusual trading activity in that stock. As a result, changes in the Index may be limited by price limitations or special quotes, or by suspension of trading, on individual stocks that comprise the Index, and these limitations may, in turn, adversely affect the value of the Notes.

NKS is under no obligation to Merrill Lynch to continue the calculation and dissemination of the Index. In the event the calculation and dissemination of the Index is discontinued, Nasdaq will delist the Notes.

If manipulative activity or other types of trading activity that raise regulatory concerns are suspected and involve Index component stocks, the NASD will rely on the Intermarket Surveillance Group Agreement to obtain the needed information from the TSE. This Agreement obligates the NASD and the TSE (among others) to compile and transmit market surveillance information and resolve in good faith any disagreements regarding requests for information or responses thereto. Also, if it ever became necessary (for example, if, hypothetically, the TSE withdrew from the Intermarket Surveillance Group Agreement), NASD would seek the Commission's assistance pursuant to memoranda of understanding or similar intergovernmental agreements or arrangements that may exist between the Commission and the Japanese securities regulators. Nasdaq represents that it will file the appropriate proposed rule change pursuant to Rule 19b–4 in the event that Nasdaq is unable to obtain surveillance sharing information via the Intermarket Surveillance Group.[7]

Other Information

Under Rule 4420(f), Nasdaq may approve for listing and trading innovative securities that cannot be readily categorized under traditional listing guidelines.[8] Nasdaq proposes to list the Notes for trading under Rule 4420(f).

The Notes, which will be registered under Section 12 of the Act, will initially be subject to Nasdaq's listing criteria for other securities under Rule 4420(f). Specifically, under Rule 4420(f)(1):

(A) The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million.[9] In the case of an issuer which is unable to satisfy the income criteria set forth in paragraph (a)(1), Nasdaq generally will require the issuer to have the following: (i) assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in $1,000 denominations, there must be a minimum of 100 holders;

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units; and

(D) The aggregate market value/principal amount of the security will be at least $4 million.

In addition, Merrill Lynch satisfies the listed marketplace requirement set forth in Rule 4420(f)(2).[10] Lastly, pursuant to Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. In particular, in accordance with NASD Rule 2310(a), Nasdaq will advise members recommending a transaction in the Notes to have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. In addition, pursuant to Rule 2310(b), prior to the

[6] Nasdaq does not find it necessary to update during the U.S. trading day the closing value for the Nikkei 225 for foreign currency fluctuations because the return on this product is a U.S. Dollar amount based on the percentage change in value of the Nikkei 225 from the initial pricing date to the close of the market on five business days before the maturity date of the Notes. Nasdaq states that this is a ''currency neutral'' product because its pricing is based on the percentage increase or decrease of the Index value, as opposed to a derivative product, such as an exchange traded fund (''ETF''), where an intraday update of the product's estimated value is adjusted (when the overseas trading market is closed during the U.S. trading day) for foreign currency fluctuations. To have the estimated value of an ETF, during the U.S. trading day, reflect changes in currency exchange rates between the U.S. Dollar and the applicable foreign currency is useful to the creation and redemption process (which involves purchasing component securities affected by currency fluctuations in some cases) and thus the secondary market trading of the derivative product. Telephone Conference on June 24, 2005 among Alex Kogan, Associate General Counsel, Nasdaq and Florence Harmon, Senior Special Counsel and Mitra Mehr, Staff Attorney, Division of Market Regulation, Commission (''June 24 Telephone Conference'').

[7] Clarification provided in June 24 Telephone Conference.

[8] *See* Securities Exchange Act Release No. 32988 (September 29, 1993), 58 FR 52124 (October 6, 1993) (SR–NASD–93–15) (approving listing standards for hybrid securities).

[9] Merrill Lynch satisfies this listing criterion.

[10] Rule 4420(f)(2) requires issuers of securities designated pursuant to this paragraph to be listed on The Nasdaq National Market or the New York Stock Exchange (''NYSE'') or be an affiliate of a company listed on The Nasdaq National Market or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of ''other'' securities on a case-by-case basis.

execution of a transaction in the Notes that has been recommended to a non-institutional customer, a member shall make reasonable efforts to obtain information concerning: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member in making recommendations to the customer.

The Notes will be subject to Nasdaq's continued listing criterion for other securities pursuant to Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly held units must be at least $1 million. The Notes also must have at least two registered and active market makers as required by Rule 4310(c)(1). Nasdaq will also consider prohibiting the continued listing of the Notes if Merrill Lynch is not able to meet its obligations on the Notes.

The Notes are a series of senior non-convertible debt securities that will be issued by Merrill Lynch and will not be secured by collateral. The Notes will be issued in denominations of whole units (''Unit''), with each Unit representing a single Note. The original public offering price of the Notes will be $10 per Unit. The Notes will not pay interest and are not subject to redemption by Merrill Lynch or at the option of any beneficial owner before maturity. The Notes' term to maturity is 4½ years.

At maturity, if the value of the Index has increased, a beneficial owner of a Note will be entitled to receive the original offering price ($10), plus an amount calculated by multiplying the original offering price ($10) by an amount equal to 123% (''Participation Rate'') of the percentage increase in the Index. If, at maturity, the value of the Index has not changed or has decreased by up to 20%, then a beneficial owner of a Note will be entitled to receive the full original offering price.

However, unlike ordinary debt securities, the Notes do not guarantee any return of principal at maturity. Therefore, if the value of the Index has declined at maturity by more than 20%, a beneficial owner will receive less, and possibly significantly less, than the original offering price: For each 1% decline in the Index below 20%, the redemption amount of the Note will be reduced by 1.25% of the original offering price.

The change in the value of the Index will normally (subject to certain modifications explained in the prospectus supplement) be determined by comparing (a) the average of the values of the Index at the close of the market on five business days shortly before the maturity of the Notes to (b) the closing value of the Index on the date the Notes were priced for initial sale to the public. The value of the Participation Rate (which, as indicated above, is 123%) was determined by Merrill Lynch on the date the Notes were priced for initial sale based on the market conditions at that time. Both the value of the Index on the date the Notes were priced and the Participation Rate were disclosed in Merrill Lynch's final prospectus supplement, which Merrill Lynch delivered in connection with the sale of the Notes.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments, or any other ownership right or interest in the portfolio of securities comprising the Index. The Notes are designed for investors who want to participate or gain exposure to the Index, and who are willing to forego market interest payments on the Notes during the term of the Notes. The Commission has previously approved the listing of other securities the performance of which has been linked, in whole or in part, to the Index.[11]

Since the Notes will be deemed equity securities for the purpose of Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. First, pursuant to Rule 2310 and IM–2310–2, members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.[12]

Members are also reminded that the Notes are considered nonconventional investments for purposes of the NASD Notice to Members 03–71 (Nov. 2003). In addition, as previously described, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. Furthermore, the Notes will be subject to the equity margin rules. Lastly, the regular equity trading hours of 9:30 a.m. to 4 p.m. will apply to transactions in the Notes.

Pursuant to Securities Exchange Act Rule 10A–3[13] and Section 3 of the Sarbanes-Oxley Act of 2002, Public Law 107–204, 116 Stat. 745 (2002), Nasdaq will prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements set forth therein.

Nasdaq represents that the NASD's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the NASD will rely on its current surveillance procedures governing equity securities and will include additional monitoring on key pricing dates. In connection with initial distributions of its Nasdaq-listed notes, Merrill Lynch is required to deliver the appropriate prospectus.

Nasdaq will commence delisting or removal proceedings with respect to the Notes (unless the Commission has approved the continued trading of the Notes) if any of the following standards are not continuously maintained:

(i) Each component security has a minimum market value of at least $75 million, except that for each of the lowest weighted component securities in the Index that in the aggregate account for no more than 10% of the weight of the Index, the market value can be at least $50 million;

(ii) Each component security shall have trading volume in each of the last six months of not less than 500,000 shares, except that for each of the lowest weighted component securities in the Index that in the aggregate account for no more than 10% of the weight of the Index, the trading volume shall be at least 400,000 shares for each of the last six months;

(iii) The total number of components in the Index may not increase or decrease by more than 33 ⅓% from the number of components in the Index at the time of the initial listing of the Notes, and in no event may be fewer than ten (10) components;

(iv) As of the first day of January and July of each year, no underlying component security will represent more than 25% of the weight of the Index, and the five highest

[11] *See* Securities Exchange Act Release Nos. 49670 (May 7, 2004), 69 FR 27959 (May 17, 2004) (SR–NASD–2004–068) (approving listing and trading of Accelerated Return Notes Linked to the Nikkei 225 Index); 49715 (May 17, 2004), 69 FR 29597 (May 24, 2004) (SR–NASD–2004–061) (approving listing and trading of 97% Protected Notes Linked to the Performance of the Global Equity Basket, which included the Index); 38940 (August 15, 1997), 62 FR 44735 (August 22, 1997) (SR–Amex–97–20) (approving listing and trading of Market Index Target-Term Securities, return on which is based on changes in value of portfolio of 11 foreign indexes, including the Index); and 27565 (December 22, 1989), 55 FR 376 (January 4, 1990) (approving listing of Index Warrants based on the Nikkei Stock Average and noting the existence of a Memorandum of Understanding between the Commission and the Japanese Ministry of Finance for surveillance purposes).

[12] Rule 2310(b) requires members to make reasonable efforts to obtain information concerning a customer's financial status, a customer's tax status, the customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

[13] 17 CFR 240.10A–3.

weighted component securities in the index do not in the aggregate account for more than 50% of the weight of the index;

(v) 90% of the Index's numerical value and at least 80% of the total number of component securities meet the then current criteria for standardized option trading of a national securities exchange or a national securities association; [14] and

(vi) Foreign country securities or American Depository Receipts that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the Index.

Nasdaq will also commence delisting or removal proceedings with respect to the Notes (unless the Commission has approved the continued trading of the Notes) under any of the following circumstances:

(i) If the aggregate market value or the principal amount of the Notes publicly held is less than $400,000;

(ii) if the value of the Index is no longer calculated or widely disseminated on at least a 15-second basis; [15] or

(iii) if such other event shall occur or condition exists which in the opinion of Nasdaq makes further dealings on Nasdaq inadvisable.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[16] in general, and with Section 15A(b)(6) of the Act,[17] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Specifically, the proposed rule change will provide investors with another investment vehicle based on the Index.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[14] In a telephone conference, Nasdaq agreed with the SEC staff that the additional standard, proposed by Nasdaq, set forth in Amendment No. 2 is inapplicable with respect to the Notes. This standard stated that ''each component security (except foreign country securities) shall be issued by a 1934 Act reporting company and listed on a national securities exchange or Nasdaq.'' June 24, 2005 Telephone Conference.

[15] As noted, because of the time difference between Tokyo and New York, the closing value of the Index will be disseminated.

[16] 15 U.S.C. 78o–3.

[17] 15 U.S.C. 78o–3(b)(6).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number NASD–2004–131 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2004–131. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–131 and should be submitted on or before August 2, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5–3682 Filed 7–11–05; 8:45 am]

**BILLING CODE 8010–01–P**

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51973; File No. SR–NYSE–2004–62]**

## Self-Regulatory Organizations; New York Stock Exchange Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto To Eliminate Rule 496 and To Amend the Listed Company Manual Relating to Transfer Agents

July 5, 2005.

**I. Introduction**

On October 29, 2004, the New York Stock Exchange Inc. (''NYSE''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] filed a proposed rule change with the Securities and Exchange Commission (''Commission'') and on December 3, 2004 and February 9, 2005, amended the proposed rule change File No. SR–NYSE–2004–62. Notice of the proposed rule change, as modified by Amendment Nos. 1 and 2, was published in the **Federal Register** on March 23, 2005.[2] Seven comment letters were received.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 51372 (March 15, 2005), 70 FR 14742 (March 23, 2005).

[3] Letters from Bert Johnson, Supervisor Shareholder Services (April 1, 2005); Donald E. Donahue, Chief Operating Officer, The Depository Trust and Clearing Corporation (April 4, 2005); Thomas L. Montrone, President and Chief Executive Officer, Registrar and Transfer Company (April 25, 2005); Charlie Rossi, President, The Securities Transfer Association, Inc. (April 28, 2005); Robert Shier, Senior Vice President and Chief Operations

On May 12, 2005, the NYSE submitted Amendment No. 3 to the proposed rule change.[4] This order approves the proposed rule change, as amended. The Commission is granting accelerated approval of Amendment No. 3, and is soliciting comments from interested persons on that amendment.

## II. Description

The NYSE is eliminating Rule 496 and is amending its Listed Company Manual (''LCM''). Pursuant to the rule change certain current significant requirements of Rule 496 with respect to entities acting as transfer agents for listed companies will now be imposed by the LCM. Because the NYSE's rules are generally applicable to members rather than listed companies, the NYSE believes it is appropriate that the transfer agent requirements be set forth solely in the LCM. In addition, the current requirements of Rule 496 are referred to, and also to some extent, repeated in various sections of the LCM. Accordingly, the NYSE believes that all transfer agent requirements would be more properly contained in the LCM.

Rule 496 required, among other things, that transfer agents for listed companies maintain an office or obtain an agent located south of Chambers Street in the Borough of Manhattan, City of New York, where securities can be delivered in person for registration of transfer and can be picked up after completion of such registration (often referred to in the industry as a ''drop''). This requirement was implemented when most securities traded on the NYSE were held in certificated form and were settled with physical delivery. The transfer agents' presence in lower Manhattan, where broker-dealers are concentrated, facilitated the speedy processing and settlement of securities transfers. However, because most securities are now held in ''street name'' at The Depository Trust Company (''DTC'')[5] and transfers of such securities occur through automated book-entry systems at DTC without the need for transfer of physical certificates, very few transfers are now facilitated by the drop in lower Manhattan. Therefore, the NYSE believes that marketplace participants, including securityholders, will not be harmed by the elimination of the drop requirement in Rule 496.

Prior to the rule change, Rule 496 also required transfer agents to record the transfer of securities received at the transfer agent's drop before the close of business on a record date as being transferred on the record date in order to establish the transferee's rights on the record date. As revised, the LCM will provide the same protection for securities sent by the close of business on a record date by a registered clearing agency (*i.e.*, DTC). Because the vast majority of securities are now held in ''street name,'' the NYSE believes that securityholders will not be disadvantaged by providing this record date protection only to registered clearing agencies.[6]

Rule 496 also required transfer agents to meet certain capital and insurance standards. The revisions to the LCM will retain the capital and insurance requirements of current Rule 496. New language of the LCM will also codify several long-standing policies and practices of the NYSE by providing for the qualification of certain transfer agents that do not otherwise meet the capital and insurance requirements of Rule 496. Accordingly, transfer agents will continue to be required to (i) have capital, surplus (both capital and earned), undivided profits, and capital reserves aggregating at least $10,000,000 and (ii) maintain blanket bond insurance coverage of at least $25,000,000 to protect securities while in transit or being processed. Also the LCM will specify that a bank, trust company, or other qualified organization acting as transfer agent may:

1. Act in a dual capacity as transfer agent/co-transfer agent and registrar if (i) a majority of its equity is owned by an entity that meets the standard capital requirements, (ii) its parent guarantees the subsidiary's performance, and (iii) the subsidiary maintains the $25,000,000 blanket bond insurance coverage or the parent maintains the coverage for the benefit of the subsidiary;

2. Act in dual capacity as transfer agent/co-transfer agent and registrar if it (i) has capital of at least $2,000,000 and errors and omissions insurance which, taken together with its capital, equals at least $10,000,000 and (ii) maintains the standard $25,000,000 blanket bond insurance coverage; or

3. Act as co-transfer agent or co-registrar (but not in a dual capacity) for securities listed on the NYSE if it has capital equal to at least $2,000,000 without maintaining the $25,000,000 blanket bond insurance coverage.

A listed company may continue to act as its own transfer agent provided that it complies with all the requirements applicable to transfer agents not affiliated with a listed company apart from the capital and insurance requirements. However, a listed company may not act as sole registrar for its listed securities unless it also acts as transfer agent.

The NYSE states that the foregoing exceptions to the capital and insurance requirements are policies that have been applied by the NYSE for many years. The NYSE believes that these policies are consistent with the protections provided to securityholders by the general standards applicable to transfer agent.

## III. Comment Letters

The Commission received seven comment letters.[7] Two of the seven commenters fully supported the proposed rule change as proposed stating that the requirement for transfer agents to maintain a drop facility below Chambers Street in the Borough of Manhattan, New York City, was obsolete in light of the immobilization of securities and the use of overnight couriers to mail securities.[8] Two other commenters supported the elimination of the drop facility requirement but opposed the extension of record date protection to two days as proposed in the initial proposed rule change.[9]

Five commenters stated that requiring transfer agents to provide record date protection for items received on record date and deposited into the mail or other commercial delivery service for delivery on record date or the day after record date, would jeopardize the timely and accurate processing and reconciliation of record date services.[10] These commenters contended this timing would (1) interrupt streamlined processing by creating a separate class of processing for items received by registered clearing agencies for NYSE-listed companies only and (2) result in

Officer, CIBC Mellon (April 29, 2005); Stephen J. Dolmatch, Executive Vice President and General Counsel, Mellon Investor Services LLC (April 29, 2005); and Robert Mackenzie, Computershare Trust Company of Canada (April 29, 2005).

[4] In Amendment No. 3, the NYSE modified the requirements of the rules with respect to the record date protection of the rights of transferees of securities sent to the transfer agent by DTC to provide such protection will only be available for securities sent on the record date itself and not on the next succeeding business day as would have been provided pursuant to Amendment No. 2.

[5] DTC is a securities depository registered as a clearing agency under Section 17A of the Exchange Act. 15 U.S.C. 78q–1(b).

[6] This record date protection was the subject of Amendment No. 3.

[7] *Supra* note 3.

[8] Letters from Supervisor Shareholder Services and The Depository Trust and Clearing Corporation.

[9] Letters from The Securities Transfer Association, Inc. and Mellon Investor Services LLC.

[10] Letters from Mellon Investor Services LLC, Computershare Trust Company of Canada, Securities Transfer Association, Inc., CIBC Mellon, and Registrar and Transfer Company.

delay of payments. Further, these commenters noted that the proposed rule change would not have required timely delivery by registered clearing agencies but only ''mailing'' of the item, which could result in record date protection being extended beyond two days.

While two of these five commenters opposed any extension of record date protection,[11] the other three commenters indicated that if eliminating any extended record date protection is not feasible, then the proposed rule change should be amended to require items be sent for next day delivery no later than on the record date rather than on the business day following record date.[12]

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change as amended is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[13] In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act that requires rules of an exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect, and facilitating transactions in securities, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[14]

The Commission believes that in light of a majority of exchange-traded securities being immobilized at DTC, the proposed rule change allows transfer agents acting for listed companies to provide for transfers of securities in a more efficient and cost effective manner by eliminating the drop requirement, which is now obsolete. Furthermore the proposed rule is consistent with the Act because it retains the capital and insurance requirements, which were in Rule 496, in the LCM.

With regards to the issue of extending record date protection by two or more days for securities sent to transfer agent by a registered clearing agency, the Commission believes that the NYSE adequately addressed commenters' concerns by submitting Amendment No. 3. Amendment No. 3 extends record date protection only to those securities that are sent by a registered clearing agency on record date (instead of no later than one business day after the record date as originally proposed) and that are sent by mail or commercial delivery service for same or next day delivery. The Commission understands that the rule may require transfer agents to accommodate a one-day delay in processing corporate actions, which the Commission understands is less than some transfer agents are accommodating in the current environment, but this delay does not seem material. As securities become increasingly dematerialized, the need to send certificates by any mail service will continue to decrease, which will further minimize the impact of the possible one day delay in processing. The Commission urges the NYSE, DTC, and the transfer agents to continue their efforts to build a facility or system that will electronically communicate transfer and corporate action information and will eliminate the need to mail certificates altogether.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the publication of notice in the **Federal Register**. Accelerating approval of Amendment No. 3 to the proposal will enable many transfer agents to immediately reduce their operating expenses by eliminating the drop facility south of Chambers Street in the Borough of Manhattan, City of New York. Furthermore, the Commission believes that after seven months of discussions between DTC, the transfer agents, and Commission staff the NYSE's Amendment No. 3 provides an acceptable and reasonable compromise to the record date protection issue and a compromise which a majority of the commenters opposing the initial proposal seemed amenable. Accordingly, the Commission finds that it is appropriate to approve Amendment No. 3 to the proposed rule change on an accelerated basis.

## V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sr.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2004–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2004–62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–62 and should be submitted on or before August 2, 2005.

## VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NYSE–2004–62) be, and it hereby is, approved.

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[11] Letters from Mellon Investor Services LLC and Computershare Trust Company of Canada.

[12] Letters from the Securities Transfer Association, Inc., CIBC Mellon, and Registrar and Transfer Company.

[13] 15 U.S.C. 78o–3(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(5).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5–3683 Filed 7–11–05; 8:45 am]

**BILLING CODE 8010–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 10131]**

### Maine Disaster # ME–00002 Declaration of Economic Injury

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Maine, dated June 23, 2005.

*Incident:* Outbreak of red tide in the waters off Maine.

*Incident Period:* May 4, 2005 and continuing.

*Effective Date:* June 23, 2005.

*EIDL Loan Application Deadline Date:* March 23, 2006.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's EIDL declaration on June 23, 2005, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties

Cumberland, Hancock, Knox, Lincoln, Sagadahoc, Waldo, Washington, York

Contiguous Counties

Maine

Androscoggin, Aroostook, Kennebec, Oxford, Penobscot, Somerset

New Hampshire

Carroll, Rockingham, Strafford

The Interest Rate is: 4.000

The number assigned to this disaster for economic injury is 101310

The States which received an EIDL Declaration # are Maine and New Hampshire

(Catalog of Federal Domestic Assistance Number 59002)

Dated: June 23, 2005.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 05–13606 Filed 7–11–05; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice 5133]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''A Masterpiece Reconstructed: The Hours of Louis XII''

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''A Masterpiece Reconstructed: The Hours of Louis XII'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, from on or about October 18, 2005, until on or about January 8, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 1, 2005.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 05–13657 Filed 7–11–05; 8:45 am]

**BILLING CODE 4710–08–P**

## DEPARTMENT OF STATE

**[Public Notice 5131]**

### United States-Egypt Science and Technology Joint Board

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Public announcement of a science and technology program for competitive grants to support Junior Scientist Development visits by U.S. and Egyptian scientists.

**EFFECTIVE DATE:** July 12, 2005.

**FOR FURTHER INFORMATION CONTACT:** Joan Mahoney, Program Administrator, U.S.-Egypt Science and Technology Grants Program, U.S. Embassy, Cairo/ECPO, Unit 64900, Box 6, APO AE 09839–4900; phone: 011–(20–2) 797–2925; fax: 011–(20–2) 797–3150; e-mail: *mahoneyjm@state.gov.*

The 2005 Program guidelines for Junior Scientist Development visits will be available starting July 12, 2005 on the Joint Board Web site: *http://www.usembassy.egnet.net/usegypt/joint-st.htm.*

**SUPPLEMENTARY INFORMATION:**

*Authority:* This program is established under 22 U.S.C. 2656d and the Agreement for Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt. A solicitation for this program will begin July 12, 2005. This program will provide modest grants for successfully competitive proposals for development visits by U.S. Junior Scientists to Egypt and Junior Egyptian Scientists to the United States. Applicants must be scientists who have received their PhD within the past ten years or for U.S. applicants only may also be currently enrolled in a Master's or PhD program. Proposals considered for funding must be postmarked by October 11, 2005. All proposals, which fully meet the submission requirements, will be considered; however, special consideration will be given to proposals in the areas of Biotechnology, Standards and Metrology, Environmental Technologies, Energy, Manufacturing Technologies and Information Technology. More information on these priorities and copies of the Program

[15] 17 CFR 200.30–3(a)(12).

Announcement/Application may be obtained upon request.

Dated: July 6, 2005.

**George Dragnich,**

*Director, Office of Science and Technology Cooperation, Bureau of Oceans and International Environmental and Scientific Affairs and, Chair, U.S.-Egypt S&T Joint Board, Department of State.*

[FR Doc. 05–13649 Filed 7–11–05; 8:45 am]

**BILLING CODE 4710–09–P**

## DEPARTMENT OF STATE

**[Public Notice 5132]**

### United States—Egypt Science and Technology Joint Board

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Public announcement of a science and technology program for competitive grants to support international, collaborative projects in science and technology between U.S. and Egyptian cooperators.

**EFFECTIVE DATE:** July 5, 2005.

**FOR FURTHER INFORMATION CONTACT:** Joan Mahoney, Program Administrator, U.S.—Egypt Science and Technology Grants Program, U.S. Embassy, Cairo/ECPO, Unit 64900, Box 6, APO AE 09839–4900; phone: 011–(20–2) 797–2925; fax: 011–(20–2) 797–3150; e-mail: *mahoneyjm@state.gov.*

The 2005 Program Announcement, including proposal guidelines, will be available starting July 5, 2005 on the Joint Board web site: *http://www.usembassy.egnet.net/usegypt/joint-st.htm.*

**SUPPLEMENTARY INFORMATION:**

*Authority:* This program is established under 22 U.S.C. 2656d and the Agreement for Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt. A solicitation for this program will begin July 5, 2005. This program will provide modest grants for successfully competitive proposals for binational collaborative projects and other activities submitted by U.S. and Egyptian experts. Projects must help the United States and Egypt utilize science and apply technology by providing opportunities to exchange ideas, information, skills, and techniques, and to collaborate on scientific and technological endeavors of mutual interest and benefit. Proposals which fully meet the submission requirements as outlined in the Program Announcement will receive peer reviews. Proposals considered for funding in Fiscal Year 2006 must be postmarked by October 3, 2005. All proposals will be considered; however, special consideration will be given to proposals that address priority areas defined/approved by the Joint Board. These include priorities in the areas of information technology, environmental technologies, biotechnology, energy, standards and metrology, and manufacturing technologies. More information on these priorities and copies of the Program Announcement/Application may be obtained by request.

Dated: July 6, 2005.

**George Dragnich,**

*Director, Office of Science and Technology Cooperation, Bureau of Oceans and International Environmental and Scientific Affairs and, Chair, U.S.—Egypt S&T Joint Board, Department of State.*

[FR Doc. 05–13653 Filed 7–11–05; 8:45 am]

**BILLING CODE 4710–09–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket OST–2005–21790]**

### Soliciting Comments on and Interest in Participating in the Essential Air Service Code-Sharing Pilot Program

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice.

**SUMMARY:** The Essential Air Service (EAS) program was created in 1978, as part of the Airline Deregulation Act of 1978, to ensure that small and isolated communities continued to receive air service by providing federal subsidy when necessary to maintain continuous service. 49 U.S.C. 41731. Vision 100—Century of Aviation Reauthorization Act, Pub. L. 108–176, Title IV, Subtitle A, Section 406, requires the Secretary of Transportation to establish a pilot program, under which the Secretary may require air carriers receiving EAS subsidy and major carriers serving large hub airports to participate in code-share arrangements for up to 10 EAS communities. The statutory language reads as follows:

SEC. 406. CODE-SHARING PROGRAM.

(a) IN GENERAL.—The Secretary of Transportation shall establish a pilot program under which the Secretary may require air carriers providing air service with compensation under subchapter II of chapter 417 of title 49, United States Code, and major carriers (as defined in section 41716(a)(2) of such title) serving large hub airports (as defined in section 40102 of such title) to participate in multiple code-share arrangements consistent with normal industry practice whenever and wherever the Secretary determines that such multiple code-sharing arrangements would improve air transportation services.

(b) LIMITATION.—The Secretary may not require air carriers to participate in the pilot program under this section for more than 10 communities receiving service under subchapter II of chapter 417 of title 49, United States Code.

This language appears to contemplate mandatory code-sharing between major carriers and carriers receiving EAS subsidy. The Department is interested in receiving comments concerning: (a) Interest by air carriers in participating in the pilot program, (b) suggestions as to how such a pilot program should be structured, and (c) potential consequences if the statutory language concerning code-share agreements was implemented.

**DATES:** You should submit comments early enough to ensure that Docket Management receives them not later than 60 days after publication of this document.

**ADDRESSES:** You may submit comments (identified by the DOT DMS Docket Number) by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: (202) 493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Request for Comments heading under the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–

401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dennis DeVany; U.S. Department of Transportation; 400 7th Street, SW., Room 6417; Washington, DC 20590. Telephone (202) 366–1053.

Issued in Washington, DC on July 1, 2005.

**Karan Bhatia,**

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 05–13630 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Proposed Advisory Circular 23–13A, Fatigue, Fail-Safe, and Damage Tolerance Evaluation of Metallic Structure for Part 23 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Extension of comment period.

**SUMMARY:** This notice announces the extension of the comment period for the notice of availability of and request for comments on a proposed advisory circular, Advisory Circular (AC) 23–13A, Fatigue, Fail-Safe, and Damage Tolerance Evaluation of Metallic Structure for Part 23 Airplanes. The FAA is extending the comment period to allow companies and individuals adequate time to complete their comments to the proposed AC.

**DATES:** The comment period is being extended from June 24, 2005 to July 22, 2005.

**ADDRESSES:** If possible, please send your comments electronically to *Michael.Reyer@faa.gov.* Otherwise, send all comments on the proposed AC to: Federal Aviation Administration, Attention: Mr. Mike Reyer, ACE–111, 901 Locust, Kansas City, MO 64106. Comments may be inspected at the above address between 7:30 and 4 p.m. weekdays, except Federal holidays. All comments should contain the name and telephone number of the individual or company making the comment, the paragraph and page number that the comment references, the reason for comment, and the recommended resolution.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mike Reyer, Standards Office, Small Airplane Directorate, Aircraft Certification Service, Kansas City, Missouri 64106, telephone (816) 329–4131, fax (816) 329–4090.

**SUPPLEMENTARY INFORMATION:** The FAA issued a notice of availability and request for comments on the proposed AC on April 15, 2005. The FAA is extending the comment period to give all interested persons the opportunity to comment on the proposed criteria.

**Comments Invited**

Interested people are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Comments should identify AC number 23–13A. Send comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.faa.gov/certification/aircraft* in a few days. A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

Issued in Kansas City, Missouri on July 5, 2005.

**David R. Showers,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–13663 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Opportunity for Public Comment on Surplus Property Release at Monroe Regional Airport, Monroe, NC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of Title 49, U.S.C. Section 47153(d), notice is being given that the FAA is considering a request from the City of Monroe to waive the requirement that a 8.7 acre parcel of surplus property, located at the Monroe Regional Airport, be used for aeronautical purposes.

**DATES:** Comments must be received on or before August 11, 2005.

**ADDRESSES:** Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Ave., Campus Building, Suite 2–260, College Park, GA 30337.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mark F. Donham, Assistant City Manager/ Airport Director at the following address: P.O. Box 69, Monroe, NC 28111.

**FOR FURTHER INFORMATION CONTACT:** Tracie D. Kleine, Program Manager, Atlanta Airports District Office, 1701 Columbus Ave., Campus Bldg., Suite 2–260, College Park, GA 30337, (404) 305–7148. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA is reviewing a request by the City of Monroe to release 8.7 acres of surplus property at the Monroe Regional Airport. The surplus property is needed for the expansion of Allvac and will be exchanged for private property that is currently owned by Allvac. The property fronts Teledyne Road and is adjacent to existing Allvac facilities. The City of Monroe will provide the 8.7 acres of surplus property in addition to $55,000 in exchange for 15.92 acres of property owned by Allvac.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the City of Monroe's Offices.

Issued in Atlanta, Georgia on July 5, 2005.

**Scott L. Seritt,**

*Manager, Atlanta Airports District Office, Southern Region.*

[FR Doc. 05–13684 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Noise Compatibility Program Notice; Addison Airport; Addison, TX

**AGENCY:** Federal Aviation Administration.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Addison Airport under the provisions of 49 U.S.C. 47501 *et seq.* (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR part 150 by the City of Addison. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for the Addison Airport were in compliance with applicable requirements, effective September 22,

2004. The proposed noise compatibility program will be approved or disapproved on or before December 27, 2005.

**DATES:** The effective date of the start of FAA's review of the noise compatibility program is July 1, 2005. The public comment period ends August 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Blackford, Environmental Specialist, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650. Telephone (817) 222–5607. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA is reviewing a proposed noise compatibility program for Addison Airport, which will be approved or disapproved on or before December 27, 2005. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to that Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has formally received the noise compatibility program for Addison Airport, effective on July 1, 2005. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act. Preliminary review of the submitted material indicates that it conforms to FAR Part 150 requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 27, 2007.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps and the proposed noise compatibility program are available for examination at the following locations: Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650; City of Addison, PO Box 9010, Addison, Texas 75001. Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Fort Worth, Texas, July 1, 2005.

**Kelvin L. Solco,**

*Manager, Airports Division.*

[FR Doc. 05–13647 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2005–38]**

### Petitions for Exemption; Summary of Petitions Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before August 1, 2005.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number FAA–2005–20948 or FAA–2005–21077] by any of the following methods:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Susan Lender (202) 267–8029 or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 6, 2005.

**Anthony F. Fazio,**

*Director, Office of Rulemaking.*

### Petitions for Exemption

*Docket No.:* FAA–2005–20948.

*Petitioner:* Honeywell International, Commercial Electronic Systems.

*Section of 14 CFR Affected:* 14 CFR 21.303(g), 21.325(b)(3), and 21.601(c).

*Description of Relief Sought:* Petitioner seeks an exemption permitting issuance of Technical Standard Order Authorizations, Parts Manufacturer Approvals, and Export Airworthiness Approvals from its facility in Hermosillo, Sonora, Mexico.

*Docket No.:* FAA–2005–21077.

*Petitioner:* Aviation Suppliers Association.

*Section of 14 CFR Affected:* 14 CFR 21.323.

*Description of Relief Sought:* Petitioner seeks an exemption permitting its members to apply for export airworthiness approvals for Class III aviation products.

[FR Doc. 05–13668 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[FTA Docket No. FTA–2005–21811]**

### Agency Information Collection Activity Under OMB Review

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for approval. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on April 11, 2005.

**DATES:** Comments must be submitted before August 11, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

**SUPPLEMENTARY INFORMATION:**

*Title:* Customer Service Surveys (*OMB Number: 2132–0559*).

*Abstract:* Executive Order 12862, ''Setting Customer Service Standards,'' requires FTA to identify its customers and determine what they think about FTA's service. The surveys covered in this request for a blanket clearance will provide FTA with a means to gather data directly from its customers. The information obtained from the surveys will be used to assess the kind and quality of services customers want and their level of satisfaction with existing services. The surveys will be limited to data collections that solicit voluntary opinions and will not involve information that is required by regulations.

*Estimated Total Annual Burden:* 706 hours.

**ADDRESSES:** All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

*Comments are Invited On:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: July 7, 2005.

**Ann M. Linnertz,**

*Deputy Associate Administrator for Administration.*

[FR Doc. 05–13646 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–57–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA 2005–21081; Notice 2]**

### Graco Children's Products Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Graco Children's Products Inc. (Graco) has determined that certain child restraints that it produced in 2004 do not comply with S4.3(a) of 49 CFR 571.302, Federal Motor Vehicle Safety Standard (FMVSS) No. 302, ''Flammability of interior materials.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Graco has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on May 4, 2005, in the **Federal Register** (70 FR 23293). NHTSA received no comments.

Affected are a total of approximately 450 Graco Comfort Sport convertible child restraints manufactured on December 27, 2004. S4.3(a) of FMVSS No. 302 requires that material ''shall not burn * * * at a rate of more than 102 mm per minute.'' Two nylon warning labels which are a component of these child restraints do not comply with this requirement.

Graco explains that the seat pad used on the Comfort Sport model contains two warning labels sewn onto the backside of the seat pad. Graco states:

> The pad is an Easy Wash pad with flaps that allow for easy removal of the seat pad without disconnecting the harness. The labels are sewn to the backside of the two flaps. The label is manufactured of nylon material and when tested as a single material does not meet the requirements of * * * S4.3(a) * * *.

Graco believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Graco states that the risk of injury from the noncompliance is inconsequential for several reasons:

> Location of labels on backside of pad. The labels are located on the backside of the pad and directly behind a child seated in the child restraint. This location is not directly accessible to any flame source. * * * The contribution of the labels to any flame spread is negligible.
>
> Small size of labels. The labels are relatively small compared to the overall size of the seat pad. * * * The size of each label is $1\frac{3}{16}'' \times 5\frac{1}{2}'' \times 0.003''$ thick.
>
> Seat pad and child restraint materials comply with FMVSS No. 302. The labels are the only material * * * that do not comply with FMVSS No. 302. * * * This overwhelming amount of material that complies * * * affords the occupant(s) the necessary protection from any flammability hazard * * *.
>
> Composite flammability testing complies. Although the label is not adhered to the pad at every point as specified by FMVSS No. 302 for composite testing, Graco has tested the labels in a composite * * * [and] it burns well within the accepted rate established by FMVSS No. 302.

Graco states that it is unaware of any complaints of a fire in this seat and consequently there has been no injury.

NHTSA agrees with Graco that the noncompliance is inconsequential to safety. As Graco states, the labels are small in size, on an absolute basis and relative to the amount of material that complies. The location of the labels on the backside of the pad is not directly accessible to any flame source. Although the label is not adhered to the pad at every point, it complies when tested for composite flammability. There have been no complaints of fire or fire-related injury in this seat. Graco has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Graco's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Issued on: July 5, 2005.

**Ronald L. Medford,**

*Senior Associate Administrator for Vehicle Safety.*

[FR Doc. 05–13655 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; General Motors Corporation

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petition for exemption.

**SUMMARY:** This document grants in full the petition of General Motors Corporation (GM) for an exemption of a high-theft line, the Chevrolet Cobalt, from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

**DATES:** The exemption granted by this notice is effective beginning with model year (MY) 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosalind Proctor, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's phone number is (202) 366–0846. Her fax number is (202) 493–2290.

**SUPPLEMENTARY INFORMATION:** In a petition dated May 6, 2005, General Motors Corporation (GM), requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR Part 541) for the Chevrolet Cobalt vehicle line, beginning with MY 2005. The petition requested an exemption from parts-marking requirements pursuant to 49 CFR Part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA for one line of vehicle lines per year.

GM's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In its petition, GM provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new vehicle line. GM will install its antitheft device as standard equipment on the MY 2005 Chevrolet Cobalt vehicle line. The antitheft device to be installed on the MY 2005 Chevrolet Cobalt, the Passlock III, is the third implementation of the Passlock concept. The Passlock III system incorporates an ignition immobilizer and is designed to provide passive protection against unauthorized vehicle use. The system does not include an audible or visual alarm as standard equipment.

GM stated that the Passlock III system uses a standard ignition key to rotate a specially coded ignition switch. The conventional mechanical code of the key is used to unlock and release the transmission lever and the steering wheel. However, before the vehicle can be operated, the electrical code in the ignition switch must be read and determined to match the value stored in the decoder module.

The electrical code in the ignition switch is provided by resistive elements enabled by the Lock cylinder. When a key with the proper mechanical cut is inserted in the lock cylinder and rotated from ''RUN'' to ''CRANK'', the resistive code will become readable by the decoder module. When the decoder module recognizes a valid code, it transmits a Vehicle Security Password via a serial data link to the Powertrain Control Module (PCM) to enable fuel flow. GM stated that there are 65,534 possible password codes. If the decoder module detects an invalid code, the Passlock III will send a Fuel Disable Password to disable fuel flow. The decoder module then enters a tamper state for ten minutes. During this time, the security light will flash, and any additional attempts to start the vehicle is ignored by the system.

GM stated that in the event of a ''slam-pull'' theft attempt or an attempt to remove the ignition switch is made, a protrusion on the lock cylinder will destroy the ignition switch, immobilizing the vehicle. In the event the lock is forced to rotate, the lock cylinder head will break off or the tool will ''cam'' out of the key-way before resistive code can be read. If the PCM does not receive a password signal from the decoder module, engine operation will remain inhibited.

In order to ensure the reliability and durability of the device, GM conducted tests based on its own specified standards. GM provided a detailed list of tests conducted and believes that its device is reliable and durable since the device complied with its specified requirements for each test. The tests conducted included high and low temperature storage, thermal shock, humidity, frost, salt fog, flammability, altitude, drop, shock, random vibration, dust, potential contaminants, connector retention/strain relief, terminal retention, connector insertion, immersion and tumbling. Additionally, GM stated that the design and assembly processes of the Passlock III subsystem and components are validated for a vehicle life of 10 years and 150,000 miles of performance.

To substantiate its beliefs as to the effectiveness of the new device, GM states that the Passlock III is designed to provide deterrence against prevalent theft methods: Hot-wiring, forced lock rotation, and forced lock extraction. GM states that field reports from law-enforcement and insurance investigators have indicated that theft deterrents installed in GM vehicles have been effective in deterring theft. Additionally, GM stated that theft data reported by the agency indicate a continued reduction in theft rates for General Motors vehicles equipped with theft deterrent systems. Therefore, GM concludes that the ''PASS-Key''-like devices are more effective in deterring motor vehicle theft than the parts-marking requirements of 49CFR part 541.

Based on the evidence submitted by GM, the agency believes that the Passlock III antitheft device for the Chevrolet Cobalt vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that GM has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information GM provided about its antitheft device.

For the foregoing reasons, the agency hereby grants in full GM's petition for an exemption for the MY 2005 Chevrolet Cobalt vehicle line from the parts-marking requirements of 49 CFR Part 541. If GM decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, the company

may have to submit a petition to modify the exemption.

Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: July 7, 2005.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 05–13654 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; DaimlerChrysler

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petition for exemption.

**SUMMARY:** This document grants in full the petition of DaimlerChrysler Corporation, (DaimlerChrysler) for an exemption of a high-theft line, the Jeep Liberty, from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

**DATES:** The exemption granted by this notice is effective beginning with model year (MY) 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosalind Proctor, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington DC 20590. Ms. Proctor's phone number is (202) 366–0846. Her fax number is (202) 493–2290.

**SUPPLEMENTARY INFORMATION:** In a petition dated March 30, 2005, DaimlerChrysler Corporation, (DaimlerChrysler), requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR Part 541) for the Jeep Liberty vehicle line, beginning with MY 2006. The petition requested an exemption from parts-marking requirements pursuant to 49 CFR 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under Section § 543.5(a), a manufacturer may petition NHTSA for one line of vehicle lines per year.

DaimlerChrysler's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In its petition, DaimlerChrysler provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new vehicle line. DaimlerChrysler will install its antitheft device as standard equipment on the MY 2006 Jeep Liberty vehicle line. The antitheft device to be installed on the MY 2006 Jeep Liberty, the Sentry Key Immobilizer System (SKIS) incorporates an ignition immobilizer system and an unauthorized vehicle start telltale light. The system does not include an audible or visual alarm as standard equipment. The (SKIS) is designed to provide passive protection against unauthorized vehicle use.

The (SKIS) prevents the engine from running for more than 2 seconds unless a valid electronically encoded key is in the ignition switch. The immobilizer feature is activated when the key is removed from the ignition switch whether the vehicle doors are open or not. Once activated, only a valid key inserted into the ignition switch will disable immobilization and allow the vehicle to start and continue to run. The SKIS has a visual telltale located in the vehicle electromechanical instrument cluster (EMIC). The components performing the immobilizer function in the SKIS are the Sentry Key REmote Entry Module (SKREEM), the Powertrain Control Module (PCM), and the Sentry Key. The ElectroMechanical Instrument Cluster (EMIC) controls the telltale function only.

The SKREEM is the primary component of the SKIS and is also the receiver for the Remote Keyless Entry system and the Tire Pressure Monitor system. When the ignition switch is turned to the ON position, the SKREEM transmits a radio frequency (RF) signal to the transponder in the ignition key. If the response received identifies the key as valid, the SKREEM sends a valid key message to PCM over the PCI data bus, and the PCM allows the engine to continue to run. To avoid any perceived delay when starting the vehicle with a valid key and to prevent unburned fuel from entering the exhaust, the engine is permitted to run for no more than 2 seconds if an invalid key is used. If the response identifies the key as invalid, or if no response is received from the key transponder, the SKREEM sends an invalid key message to the PCM. The PCM will disable engine operation (after the initial 2 second run) based upon the status of the SKREEM messages. Only 6 consecutive invalid vehicle start attempts are permitted and all further invalid attempts are locked out by not firing fuel injectors and not engaging the starter. Only communication with a valid key will permit the engine to start and run.

The telltale operates as a security indicator in the EMIC. The telltale alerts the owner that an unauthorized vehicle start attempt had been made. Upon an unauthorized start attempt, the telltale will flash on and off when the ignition switch is turned to the ''ON'' position. Besides acting as a security indicator, the telltale acts as a diagnostic indicator. If the SKREEM detects a system malfunction and/or the SKIS has become inoperative, the security indicator will stay on solid. If the SKREEM detects an invalid key or if a key transponder-related fault exists, the security indicator will flash.

Each ignition key used in the SKIS has an integral transponder chip included on the circuit board beneath the cover of the integral Remote Keyless Entry (RKE) transmitter. In addition to having to be cut to match the mechanical coding of the ignition lock cylinder and programmed for operation of the RKE system, each new Sentry Key has a unique transponder identification code that is permanently programmed into it by the manufacturer, and which must be programmed into the SKREEM to be recognized by the SKIS as a valid key. DaimlerChrysler stated that

interrogation is performed with the transponder in the key using a Texas Intruments proprietary algorithm, which in a 40-bit number which allows for over one trillion combinations. Once a Sentry Key has been programmed to a particular vehicle, it cannot be used on any other vehicle.

In order to ensure the reliability and durability of the device, DaimlerChrysler conducted tests based on its own specified standards and stated its belief that the device meets the stringent performance standards prescribed. Specifically, the device must demonstrate a minimum of 95 percent reliability with 90 percent confidence. This is the same standard that vehicle air bag systems are designed and tested to perform. The SKIS if fully functional over a voltage range of 9 Vdc to 16 Vdc and a temperature range of −40 degrees Celsius through 85 degrees Celsius. In addition to the design and production validation test criteria, the SKIS undergoes a daily short term durability test whereby three randomly chosen systems are tested once per shift at the production facility. DaimlerChrysler also stated that 100% of its systems undergo a series of three functional tests prior to being shipped from the supplier to the vehicle assembly plant for installation in its vehicles.

DaimlerChrysler stated that its actual theft experience with Jeep Liberty vehicles, where currently an immobilizer system is not offered as standard equipment, indicates that these vehicles have a theft rate significantly lower than the 1990/1991 median theft rate of 3.5826. DaimlerChrysler stated that NHTSA's theft rates for the Jeep Liberty vehicles for model years 2002 and 2003 are 2.0626 and 1.8652, respectively. DaimlerChrysler states that vehicles subject to the parts marking requirements that subsequently are equipped with ignition immobilizer systems as standard equipment indicate that even lower theft rates can be expected from a vehicle equipped with standard ignition immobilizer systems.

DaimlerChrysler offered the Jeep Grand Cherokee vehicles as an example of vehicles subject to Part 541 parts marking requirements that subsequently are equipped with ignition immobilizer systems as standard equipment. NHTSA's theft rates for the Jeep Grand Cherokee vehicles for model years 1995 through 1998 were 5.5545, 7.0188, 4.3163, and 4.3557, respectively, all significantly higher than the 1990/1991 median theft rate. DaimlerChrysler indicated that, since the introduction of immobilizer systems as standard equipment on the Jeep Grand Cherokee vehicles, the average theft rate for the MY 1999 through 2003 is 2.6537, which is significantly lower than the 1990/1991 median theft rate of 3.5826. The Jeep Grand Cherokee vehicles were granted an exemption from the parts marking requirements beginning with MY 2004 vehicles.

On the basis of this comparison, DaimlerChrysler has concluded that the proposed antitheft device is no less effective than those devices installed on lines for which NHTSA has already granted full exemption from the parts-marking requirements.

Based on the evidence submitted by DaimlerChrysler, the agency believes that the antitheft device for the Jeep Liberty vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541). The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a) (4) and (5), the agency finds that DaimlerChrysler has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information DaimlerChrysler provided about its antitheft device.

For the foregoing reasons, the agency hereby grants in full DaimlerChrysler's petition for an exemption for the MY 2006 Jeep Liberty vehicle line from the parts-marking requirements of 49 CFR Part 541. If DaimlerChrysler decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if DaimlerChrysler wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: July 7, 2005.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 05–13652 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Cancellation notice.

**SUMMARY:** The open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel (via teleconference) originally published in the **Federal Register** on July 6, 2005, has been cancelled.

**DATES:** The meeting will be held Monday, August 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mary O'Brien at 1–888–912–1227, or 206 220–6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel previously scheduled for Monday, August 1, 2005 from 4 p.m. eastern time to 5 p.m. eastern time via a telephone conference call is cancelled. If you have any question please contact Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Dated: July 7, 2005.

**Martha Curry,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E5–3691 Filed 7–11–05; 8:45 am]

BILLING CODE 4830–01–P

# Corrections

**Federal Register**

Vol. 70, No. 132

Tuesday, July 12, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Intent to Prepare a Draft Environmental Impact Statement for the Success Dam Seismic Remediation Project, CA

*Correction*

In notice document 05–12704 appearing on page 37095 in the issue of Tuesday, June 28, 2005, make the following correction:

In the second column, in section *4. Public Involvement*, in the seventh line, the sentence ''The public scoping meeting place, data and time will be advertised in the Draft EIS.'' should be removed.

[FR Doc. C5–12704 Filed 7–11–05; 8:45 am]

BILLING CODE 1505–01–D


Federal Register

**Tuesday,**
**July 12, 2005**

## Part II

# Department of the Interior

**Fish and Wildlife Service**

**50 CFR Part 32**

**2005–2006 Refuge-Specific Hunting and Sport Fishing Regulations; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 32**

**RIN 1018–AU14**

## 2005–2006 Refuge-Specific Hunting and Sport Fishing Regulations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service proposes to add six refuges to the list of areas open for hunting and/or sport fishing programs and increase the activities available at seven other refuges. We also propose to implement pertinent refuge-specific regulations for those activities and amend certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2005–2006 season.

**DATES:** We must receive your comments on or before August 5, 2005.

**ADDRESSES:** Submit written comments to Chief, Division of Conservation Planning and Policy, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 670, Arlington, VA 22203. See **SUPPLEMENTARY INFORMATION** for information on electronic submission. For information on specific refuges' public use programs and the conditions that apply to them or for copies of compatibility determinations for any refuge(s), contact individual programs at the addresses/phone numbers given in ''Available Information for Specific Refuges'' under **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Leslie A. Marler, (703) 358–2397; Fax (703) 358–2248.

**SUPPLEMENTARY INFORMATION:** The National Wildlife Refuge System Administration Act of 1966 closes national wildlife refuges in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System or we) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

We annually review refuge hunting and sport fishing programs to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications, deletions, or additions. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to refuge-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of refuge purposes or the Refuge System's mission.

Provisions governing hunting and sport fishing on refuges are in Title 50 of the Code of Federal Regulations in part 32 (50 CFR part 32). We regulate hunting and sport fishing on refuges to:

- Ensure compatibility with refuge purpose(s);
- Properly manage the fish and wildlife resource(s);
- Protect other refuge values;
- Ensure refuge visitor safety; and
- Provide opportunities for quality wildlife-dependent recreation.

On many refuges where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined in the ''Statutory Authority'' section. We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or fish, seasons, bag or creel limits, methods of hunting or sport fishing, descriptions of areas open to hunting or sport fishing, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and sport fishing in 50 CFR part 32. In this rulemaking, we are also proposing to standardize and clarify the existing language of these regulations.

### Plain Language Mandate

In this rule we made some of the revisions to the individual refuge units to comply with a Presidential mandate to use plain language in regulations; as such, these particular revisions do not modify the substance of the previous regulations. These types of changes include using ''you'' to refer to the reader and ''we'' to refer to the Service, using the word ''allow'' instead of ''permit'' when we do not require the use of a permit for an activity, and using active voice.

### Statutory Authority

The National Wildlife Refuge System Administration Act (Administration Act) of 1966 (16 U.S.C. 668dd–668ee, as amended) and the Refuge Recreation Act (Recreation Act) of 1962 (16 U.S.C. 460k–460k–4) govern the administration and public use of refuges.

Amendments enacted by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act) build upon the Administration Act in a manner that provides an ''organic act'' for the Refuge System similar to those that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Act established six wildlife-dependent recreational uses, when compatible, as the priority general public uses of the Refuge System. These uses are: hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and

not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge and the Refuge System mission. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport fishing in 50 CFR part 32. We ensure continued compliance by the development of comprehensive conservation plans, specific plans, and by annual review of hunting and sport fishing programs and regulations.

**New Hunting and Sport Fishing Programs**

In preparation for new openings, we include the following documents in each refuge's ''opening package'' (which the Region completes, the Regional Director reviews, and the refuge copies and sends to the Headquarters Office for review of compliance with the various opening requirements): (1) Step-down management plan; (2) appropriate National Environmental Policy Act (NEPA) documentation (*e.g.*, Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement); (3) appropriate NEPA decision documentation (*e.g.*, Finding of No Significant Impact, Record of Decision); (4) Endangered Species Act Section 7 evaluation; (5) copies of letters requesting State and, where appropriate, Tribal involvement and the results of the request(s); (6) draft news release; (7) outreach plan; and (8) draft refuge-specific regulation. Upon approval of these documents, the Regional Director(s) is certifying that the opening of these refuges to hunting and/or sport fishing has been found to be compatible with the principles of sound fish and wildlife management and administration and otherwise will be in the public interest.

In accordance with the Administration Act and Recreation Act, we have determined that these openings are compatible and consistent with the purpose(s) for which we established the respective refuges and the Refuge System mission. A copy of the compatibility determinations for these respective refuges is available by request to the Regional office noted under the heading ''Available Information for Specific Refuges.''

The annotated chart below reflects the following changes for the 2005–2006 season. The key below the chart explains the symbols used:

CHANGES FOR 2005–2006 HUNT/FISH SEASON

| Unit | State | Migratory bird hunting | Upland game hunting | Big game hunting | Sport fishing |
|---|---|---|---|---|---|
| Assabet River NWR | MA | A | A | A | A |
| Great Meadows NWR | MA | B | | B | E |
| Moosehorn NWR | ME | B | B | C | ..... |
| Oxbow NWR | MA | C | C | B | ..... |
| Silvio O. Conte NWR | NH | A | A | A | ..... |
| Wertheim NWR | NY | | | B | * |
| Cahaba River NWR | AL | | A | A | A |
| Julia Butler Hansen NWR | WA | * | | B | ..... |
| Stone Lakes NWR | CA | A | | | |
| Glacial Ridge NWR | MN | A | A | A | |
| Squaw Creek NWR | MO | B | | * | * |
| Sacramento River NWR | CA | B | B | B | D |
| San Bernardino NWR | AZ | E | * | | |
| Stewart B. McKinney NWR | CT | A | | | |
| Pocasse NWR | SD | | F | | |
| Rock Lake NWR | ND | | | F | |

A. refuge added to part 32 and activity(ies) opened
B. refuge already listed in part 32; added hunt category
C. refuge already listed in part 32; species added to hunt category
D. refuge already listed in part 32; land added
E. refuge opened to that activity for many years but never listed in part 32; correcting administrative oversight
F. refuge removed from part 32 (explanation below)
*Previously published.

We are adding 6 refuges to the list of open refuges in part 32 and increasing hunt categories at 7 refuges already listed in part 32.

Lands acquired as ''waterfowl production areas,'' which we generally manage as part of wetland management districts, are open to the hunting of migratory game birds, upland game, big game, and sport fishing subject to the provisions of State law and regulations (*see* 50 CFR 32.1 and 32.4). We are adding these existing wetland management districts (WMDs) to the list of refuges open for all four activities in 50 CFR part 32 this year: Big Stone WMD, Minnesota Valley WMD both in the State of Minnesota; and Arrowwood WMD, Audubon WMD, Chase Lake WMD, Crosby WMD, J. Clark Salyer WMD, Kulm WMD, Lostwood WMD, Long Lake WMD, Tewaukon WMD, and Valley City WMD all in the State of North Dakota.

We are correcting the following administrative errors in 50 CFR part 32: we are removing Pocasse National Wildlife Refuge in the State of South Dakota as it was an easement refuge, and it is no longer a part of the Refuge System; we are removing Rock Lake National Wildlife Refuge in the State of North Dakota as it closed to hunting in 1996; we are adding Great Meadows in the State of Massachusetts as open to fishing as it has been open to that opportunity for years but never reflected in 50 CFR part 32; and we are adding migratory bird hunting to San

Bernardino National Wildlife Refuge in the State of Arizona, as it has been open to that opportunity since 1986, and that was never reflected in 50 CFR part 32.

This document proposes to codify in the Code of Federal Regulations, all of the Service's hunting and/or sport fishing regulations that are applicable at Refuge System units previously opened to hunting and/or sport fishing. We are doing this to better inform the general public of the requirements at each refuge, to increase understanding and compliance with these requirements, and to make enforcement of these regulations more efficient. In addition to now finding these conditions in 50 CFR part 32, visitors to our refuges will usually find these terms and conditions reiterated in literature distributed by each refuge or posted on signs.

We have cross-referenced a number of existing regulations in 50 CFR parts 26, 27, and 32 to assist hunting and sport fishing visitors with understanding safety and other legal requirements on refuges. This redundancy is deliberate, with the intention of improving safety and compliance in our hunting and sport fishing programs.

**Fish Advisory**

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish consumption advisories on the Internet at: *http://www.epa.gov/ost/fish/.*

**Request for Comments**

You may comment on this proposed rule by any one of several methods:

1. Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions at that site for submitting comments.

2. You may mail comments to: Chief, Division of Conservation Planning and Policy, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 670, Arlington, VA 22203.

3. You may comment via the Internet to: *refugesystempolicycomments@fws.gov.* Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include: ''Attn: 1018–AU14'' and your full name and return mailing address in your Internet message. If you only use your e-mail address, we will consider your comment to be anonymous and will not consider it in the final rule. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703) 358–2036.

4. You may fax comments to: Chief, Division of Conservation Planning and Policy, National Wildlife Refuge System, at (703) 358–2248.

5. Finally, you may hand-deliver or courier comments to the address mentioned above. In light of increased security measures, please call (703) 358–2036 before hand delivering comments.

We seek comments on this proposed rule and will accept comments by any of the methods described above. Our practice is to make comments, including the names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. Also, in some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. We considered providing a 60-day, rather than a 30-day, comment period. However, we determined that an additional 30-day delay in processing these refuge-specific hunting and sport fishing regulations would hinder the effective planning and administration of our hunting and sport fishing programs. That delay would jeopardize establishment of hunting and sport fishing programs this year, or shorten their duration. Many of these rules also relieve restrictions and allow the public to participate in recreational activities on a number of refuges. In addition, in order to continue to provide for previously authorized hunting opportunities while at the same time providing for adequate resource protection, we must be timely in providing modifications to certain hunting programs on some refuges.

When finalized, we will incorporate this regulation into 50 CFR part 32. Part 32 contains general provisions and refuge-specific regulations for hunting and sport fishing on refuges.

**Clarity of This Regulation**

Executive Order (E.O.) 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand? Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to: *Execsec@ios.doi.gov.*

**Regulatory Planning and Review**

In accordance with the criteria in Executive Order 12866, the Service asserts that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and full economic analysis is not required. However, a brief assessment follows to clarify the costs and benefits associated with the proposed rule.

The purpose of this rule is to add six refuges to the list of areas open for hunting and/or sport fishing programs and increase the activities available at seven other refuges. The refuges are located in the States of Alabama, California, Connecticut, Maine, Massachusetts, Minnesota, Missouri, New Hampshire, New York, and Washington. Fishing and hunting are two of the wildlife-dependent uses of national wildlife refuges that Congress recognizes as legitimate and appropriate, and we should facilitate their pursuit, subject to such restrictions or regulations as may be necessary to ensure their compatibility with the purpose of each refuge. Many of the 545 existing national wildlife refuges already have programs where we allow fishing and hunting. Not all refuges

have the necessary resources and landscape that would make fishing and hunting opportunities available to the public. By opening these refuges to new activities, we have determined that we can make quality experiences available to the public. This rule establishes hunting and/or fishing programs and expands existing activities at the following refuges: Cahaba River National Wildlife Refuge in Alabama, Sacramento River and Stone Lakes National Wildlife Refuges in California, Stewart B. McKinney National Wildlife Refuge in Connecticut, Moosehorn National Wildlife Refuge in Maine, Assabet River, Great Meadows, and Oxbow National Wildlife Refuges in Massachusetts, Glacial Ridge National Wildlife Refuge in Minnesota, Squaw Creek National Wildlife Refuge in Missouri, Silvio O. Conte National Wildlife Refuge in New Hampshire, Wertheim National Wildlife Refuge in New York, and Julia Butler Hansen Refuge for the Columbian White-Tailed Deer in Washington.

We are correcting the following administrative errors in 50 CFR part 32: we are removing Pocasse National Wildlife Refuge in the State of South Dakota as it was an easement refuge, and it is no longer a part of the Refuge System; we are removing Rock Lake National Wildlife Refuge in the State of North Dakota as it closed to hunting back in 1996. Since both of these closures happened years ago, and we are just correcting 50 CFR part 32 to reflect this, there is no appreciable economic impact.

Lands acquired as ''waterfowl production areas,'' which we generally manage as part of wetland management districts (WMDs), are open to the hunting of migratory game birds, upland game, big game, and sport fishing subject to the provisions of State law and regulations (see 50 CFR 32.1 and 32.4). We are adding these existing WMDs to the list of refuges open for all four activities in part 32 this year: Big Stone WMD and Minnesota Valley WMD, both in the State of Minnesota; and Arrowwood WMD, Audubon WMD, Chase Lake WMD, Crosby WMD, J. Clark Salyer WMD, Kulm WMD, Lostwood WMD, Long Lake WMD, Tewaukon WMD, and Valley City WMD, all in the State of North Dakota. We do not expect any change in visitation rates at these wetland management districts because recreationists currently have the option to participate in these activities. Therefore, there are no new economic impacts from the addition of these wetland management districts to the list in 50 CFR part 32.

*Costs Incurred*

Costs incurred by this proposed regulation would be minimal, if any. We expect any law enforcement or other refuge actions related to recreational activities to be included in any usual monitoring of the refuge. Therefore, we expect any costs to be negligible.

*Benefits Accrued*

Benefits from this proposed regulation would be derived from the new fishing and hunting days from opening the refuges to these activities. If the refuges establishing new fishing and hunting programs were a pure addition to the current supply of such activities, it would mean an estimated increase of 7,455 user days of hunting and 12,000 user days of fishing (Table 1).

These new fishing and hunting days would generate: (1) Consumer surplus (the net benefit received by recreationists); and (2) expenditures associated with fishing and hunting on the refuges.

TABLE 1.—ESTIMATED CHANGE IN FISHING AND HUNTING OPPORTUNITIES IN 2005/06

| Refuge | Current hunting and/or fishing days (FY04) | Additional fishing days | Additional hunting days | Total additional fishing and hunting days |
|---|---|---|---|---|
| Assabet River | ..... | 3,000 | 130 | 3,130 |
| Great Meadows | 49,050 | ..... | 125 | 125 |
| Moosehorn | 43,500 | ..... | 985 | 985 |
| Oxbow | 18,886 | ..... | 128 | 128 |
| Silvio O. Conte | ..... | ..... | 65 | 65 |
| Wertheim | 14,750 | ..... | 1,406 | 1,406 |
| Cahaba River | ..... | 8,000 | 2,200 | 10,200 |
| Julia Butler Hansen | 2,660 | ..... | 20 | 20 |
| Stone Lakes | ..... | ..... | 14 | 14 |
| Glacial Ridge | ..... | ..... | 87 | 87 |
| Squaw Creek | 353 | ..... | 300 | 300 |
| Sacramento River | ..... | 1,000 | 1,005 | 2,005 |
| San Bernardino | 45 | ..... | ..... | 0 |
| Stewart B. McKinney | ..... | ..... | 990 | 990 |
| Total days per year | 129,244 | 12,000 | 7,455 | 19,455 |

Assuming the new days are a pure addition to the current supply, the additional days would create consumer surplus of approximately $919,000 annually ([7,455 days × $47.32 CS per day] + [12,000 days × $47.07 CS per day]) (Table 2). However, the participation trend is flat in fishing and hunting activities because the number of Americans participating in these activities has been stagnant since 1991. Any increase in the supply of these activities introduced by adding refuges where the activity is available will most likely be offset by other sites losing participants, especially if the new sites have higher quality fishing and/or hunting opportunities. Therefore, the additional consumer surplus is more likely to be smaller.

TABLE 2.—ESTIMATED CHANGE IN CONSUMER SURPLUS FROM ADDITIONAL FISHING AND HUNTING OPPORTUNITIES IN 2005/06 (2004 $)

| | Fishing | Hunting | Total fishing & hunting |
|---|---|---|---|
| Total additional days | 12,000 | 7,455 | 19,455 |
| Consumer surplus per day [1] | $47.32 | $47.07 | ..... |
| Change in total consumer surplus | $567,840 | $350,907 | $918,747 |

[1] Due to the unavailability of consistent consumer surplus estimates for these various site-specific activities, a national consumer surplus estimate is used for this analysis. The estimates are from: Kaval, Pam and John Loomis. ''Updated Outdoor Recreation Use Values with Emphasis on National Park Recreation.'' October 2003.

In addition to benefits derived from consumer surplus, this proposed rule would also have benefits from the recreation-related expenditures. Due to the unavailability of site specific expenditure data, we use the national estimates from the 2001 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the expected maximum additional participation on the Refuge System yields approximately $818,000 in fishing-related expenditures and $718,000 in hunting-related expenditures (Table 3).

TABLE 3.—ESTIMATION OF THE ADDITIONAL EXPENDITURES WITH AN INCREASE OF ACTIVITIES IN SEVEN REFUGES AND THE OPENING OF SIX REFUGES TO FISHING AND/OR HUNTING FOR 2005/06

| | U.S. total expenditures in 2001 | Average expenditures per day | Current refuge expenditures w/o duplication (FY2004) (Mil) | Possible additional refuge expenditures |
|---|---|---|---|---|
| **Anglers** | | | | |
| Total days spent | 557 Mil | ..... | $7.0 | $12,000 |
| Total expenditures | 38.0 Bil | $68 | 453.6 | 818,231 |
| Trip related | 15.6 Bil | 28 | 186.6 | 336,549 |
| Food and lodging | 6.3 Bil | 11 | 74.9 | 135,046 |
| Transportation | 3.8 Bil | 7 | 44.8 | 80,733 |
| Other | 5.6 Bil | 10 | 66.9 | 120,769 |
| **Hunters** | | | | |
| Total days spent | 228 Mil | ..... | 2.4 | 7,455 |
| Total expenditures | 22.0 Bil | 96 | 212.0 | 717,668 |
| Trip related | 5.6 Bil | 25 | 54.0 | 182,886 |
| Food and lodging | 2.6 Bil | 11 | 25.2 | 85,306 |
| Transportation | 1.9 Bil | 8 | 18.0 | 62,303 |
| Other | 1.1 Bil | 5 | 10.4 | 35,277 |

By having ripple effects throughout the economy, these direct expenditures are only part of the economic impact of waterfowl hunting. Using a national impact multiplier for hunting activities (2.73) derived from the report ''Economic Importance of Hunting in America'' and a national impact multiplier for sportfishing activities (2.79) from the report ''Sportfishing in America'' for the estimated increase in direct expenditures yields a total economic impact of approximately $4.2 million (2004 dollars) (Southwick Associates, Inc., 2003). (Using a local impact multiplier would yield more accurate and smaller results. However, we employed the national impact multiplier due to the difficulty in developing local multipliers for each specific region.)

Since we know that most of the fishing and hunting occurs within 100 miles of a participant's residence, then it is unlikely that most of this spending would be ''new'' money coming into a local economy and, therefore, this spending would be offset with a decrease in some other sector of the local economy. The net gain to the local economies would be no more than $4.2 million, and most likely considerably less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and fishing activities, their spending patterns would not add new money into the local economy and, therefore, the real impact would be on the order of $848,000 annually.

In summary, we estimate that the additional fishing and hunting opportunities would yield approximately $919,000 in consumer surplus and $848,000 in recreation-related expenditures annually. The 10-year quantitative benefit for this rule would be $17.7 million ($15.5 million discounted at 3 percent or $13.3 million discounted at 7 percent).

b. This proposed rule will not create inconsistencies with other agencies' actions. This action pertains solely to the management of the Refuge System. The fishing and hunting activities located on national wildlife refuges account for approximately 1 percent of the available supply in the United States. Any small, incremental change in the supply of fishing and hunting opportunities will not measurably impact any other agency's existing programs.

c. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This proposed rule does not affect entitlement programs. There are no grants or other Federal assistance programs associated with public use of national wildlife refuges.

d. This proposed rule will not raise novel legal or policy issues. This proposed rule opens six additional refuges for fishing and hunting programs and increases the activities available at seven other refuges. This proposed rule continues the practice of allowing recreational public use of national wildlife refuges. Many refuges in the Refuge System currently have opportunities for the public to hunt and fish on refuge lands.

**Regulatory Flexibility Act**

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601, *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule does not increase the number of recreation types allowed on the System but establishes hunting and/or fishing programs on six refuges and expands activities at seven other refuges. As a result, opportunities for wildlife-dependent recreation on national wildlife refuges will increase. The changes in the amount of allowed use are likely to increase visitor activity on these national wildlife refuges. But, as stated in the Regulatory Planning and Review section, this is likely to be a substitute site for the activity and not necessarily an increase in participation rates for the activity. To the extent visitors spend time and money in the area of the refuge that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses.

Many small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait and tackle shops, etc.) may benefit from some increased refuge visitation. A large percentage of these retail trade establishments in the majority of affected counties qualify as small businesses (Table 4).

We expect that the incremental recreational opportunities will be scattered, and so we do not expect that the rule will have a significant economic effect (benefit) on a substantial number of small entities in any region or nationally. Using the estimate derived in the Regulatory Planning and Review section, we expect approximately $848,000 to be spent in total in the refuges' local economies. The maximum increase ($4.2 million if all spending were new money) at most would be less than 1 percent for local retail trade spending (Table 4).

TABLE 4.—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2005/2006

| Refuge/County(ies) | Retail trade in 1997 (2004 dollars) (Mil) | Estimated maximum addition from new refuge | Addition as a % of total | Total number retail establish. | Establish. with < 10 emp. |
|---|---|---|---|---|---|
| Assabet River, Middlesex, MA | 17,021.1 | $148,079 | 0.0009 | 5,701 | 3,697 |
| Great Meadows, Middlesex, MA | 17,021.1 | 5,884 | 0.0001 | 5,701 | 3,697 |
| Moosehorn, Washington, ME | 306,233.4 | 46,364 | 0.0151 | 281 | 206 |
| Oxbow: | | | | | |
| Middlesex, MA | 17,021.1 | 3,012 | 0.0001 | 5,701 | 3,697 |
| Worcester, MA | 7,334.4 | 3,012 | 0.0001 | 2,796 | 1,896 |
| Silvio O. Conte, Coos, NH | 498.8 | 3,060 | 0.0006 | 293 | 218 |
| Wertheim, Suffolk, NY | 15,900.2 | 66,180 | 0.0004 | 8,946 | 6,904 |
| Cahaba River, Bibb, AL | 90.8 | 482,114 | 0.5307 | 69 | 51 |
| Julia Butler Hansen: | | | | | |
| Wahkiakum, WA | 8.6 | 471 | 0.0054 | 25 | 21 |
| Clatsop, OR | 391.2 | 471 | 0.0001 | 407 | 291 |
| Stone Lakes, Sacramento, CA | 11,183.2 | 659 | 0.0001 | 5,555 | 3,573 |
| Glacial Ridge, Polk, MN | 249.2 | 4,095 | 0.0016 | 203 | 131 |
| Squaw Creek, Holt, MO | 46.4 | 14,121 | 0.0305 | 32 | 22 |
| Sacramento River, Butte, CA | 1,768.5 | 94,625 | 0.0054 | 1,095 | 736 |
| San Bernardino, Cochise, AZ | 838.1 | 0 | 0.0001 | 628 | 439 |
| Stewart B. McKinney: | | | | | |
| New Haven, CT | 9,092.1 | 23,300 | 0.0003 | 4,852 | 3,424 |
| Fairfield, CT | 13,610.1 | 23,300 | 0.0002 | 5,672 | 3,994 |

With the small increase in overall spending anticipated from this proposed rule, it is unlikely that a substantial number of small entities will have more than a small benefit from the increased spending near the affected refuges. Therefore, we certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

**Small Business Regulatory Enforcement Fairness Act**

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small

Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The additional fishing and hunting opportunities at the seven refuges would generate angler and hunter expenditures with an economic impact estimated at $4.2 million per year (2004 dollars). Consequently, the maximum benefit of this rule for businesses both small and large would not be sufficient to make this a major rule. The impact would be scattered across the country and would most likely not be significant in any local area.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This proposed rule will have only a slight effect on the costs of hunting and fishing opportunities for Americans. Under the assumption that any additional hunting and fishing opportunities would be of high quality, participants would be attracted to the refuge. If the refuge were closer to the participants' residences, then a reduction in travel costs would occur and benefit the participants. The Service does not have information to quantify this reduction in travel cost but assumes that, since most people travel less than 100 miles to hunt and fish, the reduced travel cost would be small for the additional days of hunting and fishing generated by this proposed rule. We do not expect this proposed rule to affect the supply or demand for fishing and hunting opportunities in the United States and, therefore, it should not affect prices for fishing and hunting equipment and supplies, or the retailers that sell equipment. Additional refuge hunting and fishing opportunities would account for less than 0.001 percent of the available opportunities in the United States.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. This proposed rule represents only a small proportion of recreational spending of a small number of affected anglers and hunters, approximately a maximum of $4.2 million annually in impact. Therefore, this rule will have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide. Refuges that establish hunting and fishing programs may hire additional staff from the local community to assist with the programs, but this would not be a significant increase because we are only opening six refuges to hunting and/or fishing and only seven refuges are increasing programs by this proposed rule.

**Unfunded Mandates Reform Act**

Since this rule applies to public use of federally owned and managed refuges, it does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

**Takings (Executive Order 12630)**

In accordance with Executive Order 12630, the rule does not have significant takings implications. This regulation will affect only visitors at national wildlife refuges and describe what they can do while they are on a refuge.

**Federalism (Executive Order 13132)**

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132. In preparing this proposed rule, we worked with State governments.

**Civil Justice Reform (Executive Order 12988)**

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation will clarify established regulations and result in better understanding of the regulations by refuge visitors.

**Energy Supply, Distribution or Use (Executive Order 13211)**

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule opens six refuges to hunting and/or sport fishing programs and makes minor changes to other refuges open to those activities, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

**Consultation and Coordination with Indian Tribal Governments (Executive Order 13175)**

In accordance with Executive Order 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations. This regulation is consistent with and not less restrictive than Tribal reservation rules.

**Paperwork Reduction Act**

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Number is 1018–0102). See 50 CFR 25.23 for information concerning that approval. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**Endangered Species Act Section 7 Consultation**

In preparation for new openings, we include Section 7 consultation documents approved by the Service's Endangered Species program in the refuge's ''openings package'' for Regional review and approval from the Headquarters Office. We reviewed the changes in hunting and fishing regulations herein with regard to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1544, as amended) (ESA). For the national wildlife refuges proposed to open for hunting and/or fishing we have determined that Moosehorn National Wildlife Refuge (bald eagle), Wertheim National Wildlife Refuge, Cahaba River National Wildlife Refuge, Julia Butler Hansen National Wildlife Refuge (Columbia white-tailed deer and bald eagle), Glacial Ridge National Wildlife Refuge, Squaw Creek National Wildlife Refuge (bald eagle), and Sacramento River National Wildlife Refuge will not likely adversely affect any endangered or threatened species or designated critical habitat; and Assabet River National Wildlife Refuge, Great Meadows National Wildlife Refuge,

Moosehorn National Wildlife Refuge (Atlantic salmon), Oxbow National Wildlife Refuge, Silvio O. Conte National Wildlife Refuge, Julia Butler Hansen National Wildlife Refuge (marbled murrelet, northern spotted owl, bull trout, howellia, Nelson's checkermallow, streaked horned lark), Stewart B. McKinney National Wildlife Refuge, Squaw Creek National Wildlife Refuge (piping plover and least tern), and Stone Lakes National Wildlife Refuge will not affect any endangered or threatened species or designated critical habitat; and Squaw Creek National Wildlife Refuge (Eastern Massasauga rattlesnake) is not likely to jeopardize candidate or proposed species critical habitat.

We also comply with Section 7 of the ESA when developing Comprehensive Conservation Plans (CCPs) and step-down management plans for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. We also make determinations when required by the ESA before the addition of a refuge to the lists of areas open to hunting or fishing as contained in 50 CFR 32.7.

**National Environmental Policy Act**

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and 516 DM 6, Appendix 1. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required.

A categorical exclusion from NEPA documentation applies to this amendment of refuge-specific hunting and fishing regulations since it is technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (516 DM 2, Appendix 1.10).

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these proposed refuge hunting and fishing activities in the refuge CCPs and/or other step-down management plans, pursuant to our refuge planning guidance in 602 FW 1, 3, and 4. We prepare these CCPs and step-down plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans.

**Available Information for Specific Refuges**

Individual refuge headquarters retain information regarding public use programs and conditions that apply to their specific programs and maps of their respective areas. You may also obtain information from the regional offices at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Stone Lakes National Wildlife Refuge; 1624 Hood-Franklin Road; Elk Grove, California 95757–9774; (916) 775–4421.

Region 2—Arizona, New Mexico, Oklahoma and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, 500 Gold Avenue, Albuquerque, New Mexico 87103; Telephone (505) 248–7419.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1 Federal Drive, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713–5401.

Glacial Ridge National Wildlife Refuge c/o Rydell National Wildlife Refuge; 17788 349th Street, SE; Erskine, Minnesota 56535; (218) 687–2229.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345; Telephone (404) 679–7166.

Cahaba National Wildlife Refuge; 291 Jimmy Parks Blvd.; Anniston, Alabama 36205; (256) 848–7085.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8306.

Assabet River National Wildlife Refuge c/o Eastern Massachusetts National Wildlife Refuge Complex; 73 Weir Hill Road, Sudbury, Massachusetts 01776; (978) 443–4661.

Silvio O. Conte National Wildlife Refuge; 52 Avenue A; Turners Falls, Massachusetts 01376; (413) 863–0209.

Stewart B. McKinney National Wildlife Refuge; P.O. Box 1030, 733 Old Clinton Road; Westbrook, Connecticut 06498; (860) 399–2513.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, Colorado 80228; Telephone (303) 236–8145.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545.

**Primary Author**

Leslie A. Marler, Management Analyst, Division of Conservation Planning and Policy, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Arlington, Virginia 22203, is the primary author of this rulemaking document.

**List of Subjects in 50 CFR Part 32**

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

For the reasons set forth in the preamble, we propose to amend Title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

## PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

**§ 32.7 [Amended]**

2. Amend § 32.7 by:

a. Adding the listing of ''Cahaba River National Wildlife Refuge'' in the State of Alabama;

b. Adding the listings of ''Sacramento River National Wildlife Refuge'' and ''Stone Lakes National Wildlife Refuge'' in the State of California;

c. Adding the listing of ''Stewart B. McKinney National Wildlife Refuge'' in the State of Connecticut;

d. Adding the listing of ''Assabet River National Wildlife Refuge'' in the State of Massachusetts;

e. Adding the listings of ''Big Stone Wetland Management District, Glacial Ridge National Wildlife Refuge'', and ''Minnesota Valley Wetland Management'' in the State of Minnesota;

f. Adding the listing of ''Silvio O. Conte National Wildlife Refuge'' in the State of New Hampshire; and

g. Adding the listings of ''Arrowwood Wetland Management District'',

''Audubon Wetland Management District'', ''Chase Lake Wetland Management District'', ''Crosby Wetland Management District'', ''J. Clark Salyer Wetland Management District'', ''Kulm Wetland Management District'', ''Lostwood Wetland Management District'', ''Long Lake Wetland Management District'', ''Tewaukon Wetland Management District'', and ''Valley City Wetland Management District'' in the State of North Dakota.

3. Amend § 32.20 Alabama by:

a. Adding ''Cahaba National Wildlife Refuge''; and

b. Revising the introductory text of paragraph C. and adding paragraph C.9. of Wheeler National Wildlife Refuge to read as follows:

**§ 32.20 Alabama.**

* * * * *

**Cahaba National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, opossum, raccoon, coyote, and bobcat on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed hunt permit when hunting.

2. We prohibit hunting within 100 yards (90 m) of River Road.

3. We prohibit ATVs, mules, and horses on the refuge.

4. We allow the use of dogs to hunt upland game, but the dogs must be under the immediate control of the handler at all times and not allowed to run free (*see* § 26.21(b) of this chapter).

5. We allow shotguns with #4 shot or smaller, rifles firing .22 caliber rimfire ammunition, or archery equipment.

*C. Big Game Hunting.* We allow the hunting of white-tailed deer, feral hog, and wild turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed hunt permit when hunting.

2. We only allow the use of archery equipment during white-tailed deer season.

3. We prohibit marking trees and the use of flagging tape, reflective tacks, and other similar marking devices.

4. We prohibit damaging trees or hunting from a tree that contains an inserted metal object (*see* § 27.51 of this chapter). Hunters must remove stands from trees after each day's hunt (*see* §§ 27.93 and 27.94 of this chapter).

5. We require tree stand users to use a safety belt or harness.

6. We prohibit the use of dogs for hunting or pursuit of big game.

7. Conditions B2 and B3 apply.

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit the taking of frog or turtle (*see* § 27.21 of this chapter).

2. Condition B3 applies.

* * * * *

**Wheeler National Wildlife Refuge**

* * * * *

*C. Big Game Hunting.* We allow the hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

9. You may only hunt feral hog during the refuge archery and flintlock deer season.

* * * * *

4. Amend § 32.22 Arizona by:

a. Revising paragraph B.1. of Bill Williams National Wildlife Refuge;

b. Revising Havasu National Wildlife Refuge;

d. Revising the introductory text of paragraphs A. and B., revising paragraphs B.2. through B.5., and revising paragraphs C. and D. of Imperial National Wildlife Refuge;

d. Revising paragraph A., revising the introductory text of paragraph B., and revising paragraph and B.1. of San Bernardino National Wildlife Refuge to read as follows:

**§ 32.22 Arizona.**

* * * * *

**Bill Williams National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

1. Conditions A1 through A7 apply.

* * * * *

**Havasu National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of mourning and white-winged dove, duck, coot, moorhen, goose, and common snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit falconry.

2. You may possess only approved nontoxic shot while in the field (*see* § 32.2(k)).

3. You may not hunt within 50 yards (45m) of any building or public road.

4. We prohibit target shooting or the discharge of any weapon except to hunt.

5. We prohibit possession of firearms except while hunting.

6. We prohibit the construction or use of pits and permanent blinds (*see* § 27.92 of this chapter).

7. You must remove temporary blinds, boats, hunting equipment, and decoys from the refuge following each day's hunt (*see* §§ 27.93 and 27.94 of this chapter).

8. We prohibit retrieving game from closed areas. You may retrieve game from areas closed to hunting, but otherwise open to entry, as long as you possess no firearms or other means of take.

9. Anyone hired to assist or guide hunter(s) must obtain, possess, and carry a valid Special Use Permit issued by the refuge manager.

10. We prohibit hunting on those refuge lands within the Lake Havasu City limits.

11. The following conditions apply only to Pintail Slough (all refuge lands north of North Dike):

i. We require a fee for waterfowl hunting. You must possess proof of payment (refuge permit) while hunting.

ii. Waterfowl hunters must hunt within 25 feet (7.5 m) of the numbered post of their assigned blind.

iii. We limit the number of persons at each waterfowl hunt blind to three. Observers cannot hold shells or guns unless in possession of a valid State hunting license and stamps.

iv. We limit the number shells a waterfowl hunter may possess to 25.

v. Waterfowl hunters must possess at least 12 decoys per blind.

vi. You may use only dead vegetation or materials brought from off refuge for making or fixing hunt blinds. We prohibit the cutting, pulling, marking or removing vegetation (*see* § 27.51 of this chapter).

vii. Waterfowl hunters must be at their blind at least 45 minutes before legal shoot time and not leave their blind until 10 a.m. MST.

viii. Waterfowl hunting ends at 12 p.m. (noon) MST. Hunters must be out of the slough area by 1 p.m. MST.

ix. We allow hunting in the juniors-only waterfowl season.

x. We allow dove hunting only during the September season.

12. The following conditions apply to all waters of the lower Colorado River within the Havasu NWR:

i. We close designated portions of Topock Marsh to all entry from October 1 through the last day of the waterfowl hunt season (including the State junior waterfowl hunt). These areas are indicated in refuge brochures and identified by buoys and/or signs.

ii. We prohibit hunting in the waters of the Colorado River and on those refuge lands within ¼ mile (.4 km) of the waters of the Colorado River from and including Castle Rock Bay north to Interstate 40.

iii. We allow hunting on refuge lands and waters south of Castle Rock Bay to the north boundary of the Lake Havasu City limits.

*B. Upland Game Hunting.* We allow hunting of quail and cottontail rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A10, A11vi., and A12 apply.

2. We prohibit the possession or use of rifles.

3. We allow hunting of quail in Pintail Slough prior to and following the State waterfowl season (The State waterfowl season includes the State general waterfowl season, the days between the juniors-only waterfowl hunt and the general State waterfowl season, and the juniors-only waterfowl hunt.).

4. We allow hunting of cottontail rabbit in Pintail Slough prior to and following the State waterfowl season (The State waterfowl season includes the State general waterfowl season, the days between the juniors-only waterfowl hunt and the general State waterfowl season, and the juniors-only waterfowl hunt.).

*C. Big Game Hunting.* We allow hunting of bighorn sheep on those refuge lands in Arizona Wildlife Management Area 16B in accordance with State regulations subject to the following conditions:

1. Conditions A3 through A9 and A12ii apply.

D. *Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations (Colorado River specific regulations apply) subject to the following conditions:

1. We prohibit the use of all air-thrust boats or air-cooled propulsion engines, including floating aircraft.

2. We prohibit overnight boat mooring and shore anchoring unless actively fishing as defined by State regulations (*see* § 27.93 of this chapter).

3. Anyone hired to assist or guide anglers must obtain, possess, and carry a valid Special Use Permit issued by the refuge manager.

4. The following apply only on Topock Marsh:

i. We close designated portions to all entry from October 1 through the last day of the waterfowl hunt season (including the State junior waterfowl hunt).

ii. We close designated portions to all entry from April 1 through August 31. These areas are indicated in refuge brochures and identified by buoys and or signs.

iii. We prohibit personal watercraft (PWC, as defined by State law).

5. The following apply to all waters of the Colorado River within Havasu NWR from the south regulatory buoy line to the north regulatory buoy line at Interstate 40 (approximately 17 miles (27.2 km)).

i. We prohibit personal watercraft (PWC, as defined by State law) as indicated by signs or regulatory buoys in all backwaters.

ii. We limit watercraft speed as indicated by signs or regulatory buoys to *no wake* (as defined by State law) in all backwaters.

iii. We prohibit water-skiing, tubing, wake boarding, or other recreational-towed devices.

6. The following apply to the Mesquite Bay areas of Lake Havasu.

i. We prohibit entry of all watercraft (as defined by State law) in all three bays as indicated by signs or regulatory buoys.

ii. The Mesquite Bays are Day Use Only areas and open from 1 hour before legal sunrise to 1 hour after legal sunset.

**Imperial National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of mourning and white-winged dove, duck, coot, moorhen, goose, and common snipe on designated areas of the refuge subject to the following conditions:

* * * * *

*B. Upland Game Hunting.* We allow hunting of quail, cottontail rabbit, coyote, and fox on designated areas of the refuge subject to the following conditions:

* * * * *

2. You may possess only approved nontoxic shot while hunting quail and cottontail rabbit (see § 32.2(k).

3. We allow cottontail rabbit hunting from September 1 to the close of the State quail season.

4. We require Special Use Permits for hunting coyote and fox.

5. We allow coyote and fox hunting only during the State quail season.

*C. Big Game Hunting.* We allow hunting of mule deer and desert bighorn sheep on designated areas of the refuge.

*D. Sport Fishing.* We allow fishing and frogging for bullfrog on designated areas of the refuge subject to the following condition: We close posted portions of Martinez Lake and Ferguson Lake to entry from October 1 through the last day of February.

* * * * *

**San Bernardino National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of mourning and white-winged dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow only shotguns.

2. You may possess only approved nontoxic shot while in the field (*see* § 32.2(k)).

*B. Upland Game Hunting.* We allow hunting of quail and cottontail rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A2 apply.

* * * * *

5. Amend § 32.23 Arkansas by:

a. Revising paragraphs A.10., A.13., and adding paragraph A.21., revising paragraph B.1., revising paragraph C.1., adding paragraph C.15., and revising paragraph D.4. of Felsenthal National Wildlife Refuge;

b. Adding paragraphs B.11. and B.12., revising paragraph C.1., C.4., and D.1. of Holla Bend National Wildlife Refuge;

c. Revising paragraphs A.10., A.13., and adding paragraph A.20., revising paragraphs B.1., C.1., and adding paragraph C.11. of Overflow National Wildlife Refuge; and

d. Revising paragraphs A.8. and A.11., adding paragraph A.19., revising paragraphs B.3. and C.2., adding paragraph C.16., and revising paragraph D.3. of Pond Creek National Wildlife Refuge to read as follows:

**§ 32.23 Arkansas.**

* * * * *

**Felsenthal National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

* * *

* * * * *

10. We prohibit possession or use of alcoholic beverage(s) while hunting (*see* § 32.2(j)). We prohibit consumption or possession of opened container(s) of alcoholic beverage(s) in parking lots, on roadways, and in plain view in campgrounds.

* * * * *

13. We only allow ATVs for wildlife-dependent activities such as hunting and fishing. We restrict ATVs to designated times and designated trails (*see* § 27.31 of this chapter) marked with signs and paint. We identify these trails and the dates they are open for use in the refuge hunt brochure. We limit ATVs to those having an engine displacement size not exceeding 700cc. We limit ATV tires to those having a centerline lug depth not exceeding 1 inch (2.5 cm). You may use horses on roads and ATV trails (when open to motor vehicle and ATV traffic respectively) as a mode of transportation

for on-refuge, wildlife-dependent activities.

* * * * *

21. We prohibit the use or possession of any electronic call or other electronic device used for producing or projecting vocal sounds of any wildlife species.

*B. Upland Game Hunting.* * * *

1. Conditions A4 through A18, A20, and A21 apply.

* * * * *

*C. Big Game Hunting.* * * *

1. Conditions A6, A8 through A11, A13 through A18, A20, and A21 apply.

* * * * *

15. We prohibit the use of deer decoy(s).

*D. Sport Fishing.* * * *

* * * * *

4. We prohibit consumption or possession of opened container(s) of alcoholic beverage(s) in parking lots, on roadways, and in plain view in campgrounds (*see* § 32.2(j)).

**Holla Bend National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

11. Hunters must enter and exit the refuge from designated roads and parking areas.

12. We prohibit hunting within 150 feet (45 m) of roads and trails open to public use.

*C. Big Game Hunting.* * * *

1. Conditions B1 and B4 through B12 apply.

* * * * *

4. The firearms spring youth hunt for turkey is the same as the State. We restrict hunting to youths under age 16. One adult age 18 or older must accompany one youth hunter. We must receive applications for hunts by the last day of January.

* * * * *

*D. Sport Fishing.* * * *

1. Conditions B6, B7, B8, and B10 apply.

* * * * *

**Overflow National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

* * * * *

10. We prohibit possession or use of alcoholic beverage(s) while hunting (*see* § 32.2(j)). We prohibit consumption or possession of opened container(s) of alcoholic beverage(s) in parking areas and on roadways.

* * * * *

13. We only allow ATVs for wildlife-dependent activities such as hunting and fishing. We restrict ATVs to designated times and designated trails (*see* § 27.31 of this chapter) marked with signs and paint. We identify those trails and the dates they are open for use in the refuge hunt brochure. We limit ATVs to those having an engine displacement size not exceeding 700cc. We limit ATV tires to those having a centerline lug depth not exceeding 1 inch (2.5 cm). You may use horses on roads and ATV trails (when open to motor vehicle and ATV traffic respectively) as a mode of transportation for on-refuge, wildlife-dependent activities. You may use ATVs on unmarked roads and levees in the North Sanctuary beginning 2 days prior to the opening of deer archery season through October 31.

* * * * *

20. We prohibit the use or possession of any electronic call or other electronic device used for producing or projecting vocal sounds of any wildlife species.

*B. Upland Game Hunting.* * * *

1. Conditions A4 through A17, A19, and A20 apply.

* * * * *

*C. Big Game Hunting.* * * *

1. Conditions A5 through A11, A13 through A17, A19, and A20 apply.

* * * * *

11. We prohibit the use of deer decoy(s).

* * * * *

**Pond Creek National Wildlife Refuge**

A. *Migratory Game Bird Hunting.* * * *

* * * * *

8. We prohibit possession or use of alcoholic beverage(s) while hunting (*see* § 32.2(j)). We prohibit consumption or possession of opened container(s) of alcoholic beverage(s) in parking lots, on roadways, and in plain view in campgrounds.

* * * * *

11. We only allow ATVs for wildlife-dependent activities such as hunting and fishing. We restrict ATVs to designated times and designated trails (*see* § 27.31 of this chapter) marked with signs and paint. We identify those trails and the dates they are open for use in the refuge hunt brochure. We limit ATVs to those having an engine displacement size not exceeding 700cc. We limit ATV tires to those having a centerline lug depth not exceeding 1 inch (2.5 cm). You may use horses on roads and ATV trails (when open to motor vehicle and ATV traffic respectively) as a mode of transportation for on-refuge, wildlife-dependent activities.

* * * * *

19. We prohibit the use or possession of any electronic call or other electronic device used for producing or projecting vocal sounds of any wildlife species.

*B. Upland Game Hunting.* * * *

* * * * *

3. Conditions A4 through A16, A18, and A19 apply.

* * * * *

*C. Big Game Hunting.* * * *

* * * * *

2. Conditions A4, A5 (for archery deer and muzzleloader deer hunts and spring turkey hunts), A6 through A9, A11 through A16, A18, and A19 apply.

* * * * *

16. We prohibit the use of deer decoy(s).

*D. Sport Fishing.* * * *

* * * * *

3. We prohibit consumption or possession of opened container(s) of alcoholic beverage(s) in parking lots, on roadways, and in plain view in campgrounds (*see* § 32.2(j)).

* * * * *

6. Amend § 32.24 California by:

a. Revising paragraphs A.2. through A.9. and adding paragraph A.10. of Don Edwards San Francisco Bay National Wildlife Refuge;

b. Revising Sacramento River National Wildlife Refuge; and

c. Alphabetically adding Stone Lakes National Wildlife Refuge to read as follows:

**§ 32.24 California.**

* * * * *

**Don Edwards San Francisco Bay National Wildlife Refuge**

A. *Migratory Game Bird Hunting.* * * *

* * * * *

2. We allow hunting in the 17 salt evaporation ponds listed below. These ponds are surrounded by levees and were formerly part of the San Francisco Bay. We have not opened any other ponds.

i. Ponds R1 and R2 in the Ravenswood Unit. These ponds are located on the west side of the Dumbarton Bridge between Ravenswood Slough and Highway 84. You may access these ponds only by foot or bicycle from either of two trailheads off Highway 84. We prohibit hunting within 300 feet (90 m) of Highway 84. These ponds will be open 7 days a week.

ii. Ponds M1, M2, M3, M4, M5, M6, and A19 in the Mowry Slough Unit. These ponds are located on the east side of the Bay between Mowry Slough and Coyote Creek. You may only access these ponds by boat. You may land your boat at specific points on the Bay side of the levee as designated by refuge

signs. You may pull your boat across the levee from the Bay. We prohibit hunting within 300 feet (90 m) of the Union Pacific Railroad track. These ponds will be open 7 days a week.

iii. Ponds AB1, A2E, AB2, A3N, and A3W in the Alviso Unit. These ponds are located on the west side of the Bay between Stevens Creek and Guadalupe Slough. You must obtain a refuge Special Use Permit to hunt these ponds. Access to Ponds AB1 and A2E will be from the Crittenden Lane Trailhead in Mountain View. Access to Pond A3W will be from the Carl Road Trailhead in Sunnyvale. Access to Ponds A3N and AB2 is by boat from the other ponds. We allow hunting only from existing hunting blinds. We allow hunting only on Wednesdays, Saturdays, and Sundays on these ponds.

iv. Ponds A5, A7, and A8N in the Alviso Unit. These ponds are located on the south end of the Bay between Guadalupe Slough and Alviso Slough. You must obtain a refuge Special Use Permit to hunt these ponds. Access is via walking and bicycling from the Gold Street gate in Alviso. We allow hunting from existing hunting blinds and by walking pond levees. We allow hunting only on Wednesdays, Saturdays, and Sundays on these ponds.

3. During the 2 weekends before the opening of the hunt season, you may bring a boat into Ponds AB1, A2E, AB2, A3N, A3W, A5, A7, and A8N and moor it at a designated site only if authorized by a valid refuge Special Use Permit. These boats will be used to access the hunting blinds and will stay in the pond during the hunt season. You must remove your boat within 2 weeks following the close of the hunt season. We allow nonmotorized boats and motorized boats powered by electric or 4-stroke gasoline motors only.

4. You may maintain an existing blind in the ponds open to hunting if you have a valid refuge Special Use Permit, but the blind will be open for general use on a first-come, first-served basis. We prohibit pit blinds or digging into the levees (*see* § 27.92 of this chapter).

5. You must remove all decoys and other personal property (except personal boats authorized by a refuge Special Use Permit) from the refuge by legal sunset. You must remove all trash, including shotshell hulls, when leaving hunting areas (*see* §§ 27.93 and 27.94 of this chapter).

6. Hunters may enter closed areas of the refuge to retrieve downed birds, provided they leave all weapons in a legal hunting area. We encourage the use of retriever dogs. You must keep your dog(s) under immediate control of the handler at all times (*see* § 26.21(b) of this chapter). Dogs must remain inside a vehicle or be on a leash until they are on the ponds or on the levees (Ponds R1, 2, A5, 7, and 8N only) as a part of the hunt.

7. You may possess only approved nontoxic shot while in the field (*see* § 32.2(k)).

8. You must keep firearms unloaded (*see* § 27.42(b) of this chapter) until you are within the designated hunt area.

9. We prohibit target practice on the refuge or any nonhunting discharge of firearms (*see* § 27.42 of this chapter).

10. At the Ravenswood Unit only, we only allow portable blinds or construction of temporary blinds of natural materials that readily decompose. We prohibit collection of these natural materials from the refuge (*see* § 27.51 of this chapter). You must remove portable blinds (*see* §§ 27.93 and 27.94 of this chapter) by legal sunset. Temporary blinds become available for general use on a first-come, first-served basis on subsequent days. We prohibit permanent blinds, pit blinds, or digging into the levees (*see* § 27.92 of this chapter). We prohibit entry into closed areas of the refuge prior to the hunt season in order to scout for hunting sites or to build blinds.

* * * * *

**Sacramento River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, moorhen, dove, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow shotgun hunting.

2. You must unload firearms (*see* § 27.42(b) of this chapter) before transporting them between parking areas and hunting areas. ''Unloaded'' means that no ammunition is in the chamber or magazine of the firearm.

3. You may possess only approved nontoxic shot while in the field (*see* § 32.2(k)).

4. We prohibit hunting within 50 feet (15 m) of any landward boundary adjacent to private property.

5. We prohibit hunting within 150 yards (45 m) of any occupied dwelling, house, residence, or other building or any barn or other outbuilding used in connection therewith.

6. Access to the hunt area is by foot traffic or boat only. We prohibit bicycles or other conveyances. Mobility-impaired hunters should consult with the refuge manager for allowed conveyances.

7. We prohibit fires on the refuge, except we allow portable gas stoves on gravel bars (*see* § 27.95(a) of this chapter).

8. We allow camping on gravel bars up to 7 days during any 30-day period. We prohibit camping on all other refuge lands.

9. We open the refuge for day-use access from 1 hour before legal sunrise until 1 hour after legal sunset. We allow access during other hours on gravel bars only (*see* condition A8).

10. We require dogs to be kept on a leash, except for hunting dogs engaged in authorized hunting activities, and under the immediate control of a licensed hunter (*see* § 26.21(b) of this chapter).

11. We prohibit permanent blinds. You must remove all personal property, including decoys and boats, by legal sunset (*see* §§ 27.93 and 27.94 of this chapter).

12. We prohibit cutting or removal of vegetation for blind construction or for making trails (*see* § 27.51 of this chapter).

*B. Upland Game Hunting.* We allow hunting of pheasant, turkey, and quail on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow shotgun and archery hunting.

2. Conditions A3 through A10 and A12 apply.

*C. Big Game Hunting.* We allow hunting of black-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A4, A5, A7, A8, A9, A12, and B1 apply.

2. We prohibit construction or use of permanent blinds, platforms, ladders or screw-in foot pegs.

3. You must remove all personal property, including stands, from the refuge by legal sunset (*see* §§ 27.93 and 27.94 of this chapter).

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A7, A8, A9, and A12 apply.

2. On Packer Lake, due to primitive access, we only allow boats up to 14 feet (4.2 m) and canoes.

* * * * *

**Stone Lakes National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, and moorhen on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting on Sun River Unit only on Tuesdays and Saturdays

from ½ hour before legal sunrise until 12 p.m. (noon) up until the first Saturday in December. Thereafter, we allow hunting on Sun River unit only on Tuesdays, Thursdays, and Saturdays from ½ hour before legal sunrise until 12 p.m. (noon).

2. We will select hunters through a random drawing process conducted at the refuge. Hunters must bring a copy of their refuge notification on the day of their hunt. Hunters should contact the refuge manager for additional information.

3. We require adults, age 18 or older, to accompany hunters under age 16.

4. We prohibit bicycles or other conveyances. Mobility-impaired hunters should contact the refuge manager regarding allowed conveyances.

5. You must unload firearms (*see* § 27.42(b) of this chapter) before transporting them between parking areas and spaced-blind areas. ''Unloaded'' means that no ammunition is in the chamber or magazine of the firearm.

6. We restrict hunters to their assigned spaced-blind except when they are placing or retrieving decoys, traveling to and from the parking area, retrieving downed birds, or when shooting to retrieve cripples.

7. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)) in quantities of 25 or less.

8. We prohibit fires on the refuge (*see* § 27.95(a) of this chapter).

9. We allow vehicles to stop only at designated parking areas. We prohibit dropping of passengers or equipment or stopping between designated parking areas.

10. We allow only nonmotorized boats to access water blinds.

11. You must remove all decoys, personal equipment, shotshell hulls, and refuse from the refuge by legal sunset (*see* §§ 27.93 and 27.94 of this chapter).

12. Junior hunters must possess a valid Junior Hunting License.

13. We allow the use of hunting dogs for retrieving birds, provided the dogs remain under the immediate control of the hunter at all times (*see* § 26.21(b) of this chapter).

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* [Reserved]

* * * * *

7. Amend § 32.25 Colorado by revising paragraph D. of Rocky Mountain Arsenal to read as follows:

**§ 32.25 Colorado.**

* * * * *

**Rocky Mountain Arsenal**

* * * * *

*D. Sport Fishing.* We allow fishing at designated times and on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require a valid State fishing license and valid refuge fishing permit for all anglers age 16 and older. You must obtain and display a daily refuge fishing badge while fishing.

2. We only allow the use of rod and reel with one hook or lure per line.

3. We only allow catch and release fishing.

4. We only allow barbless hooks.

5. We only allow artificial flies or lures.

6. We prohibit the use of live bait.

7. Amend § 32.26 Connecticut by adding an introductory paragraph and adding Stewart B. McKinney National Wildlife Refuge to read as follows:

**§ 32.26 Connecticut.**

The following refuge units have been opened for hunting and/or fishing and are listed in alphabetical order with applicable refuge-specific regulations.

**Stewart B. McKinney National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, coot, and goose on designated areas of the Great Meadows Unit in Stratford, Connecticut in accordance with State regulations subject to the following conditions:

1. We require hunters to obtain an annual Special Use Permit in advance for permission to hunt in the designated hunting area. Consult the refuge manager for details on how and when to apply for a Special Use Permit.

2. Any person entering, using, or occupying the refuge for hunting must abide by all the terms and conditions of the Special Use Permit.

3. You must have all applicable hunting licenses, permits, stamps, and a photographic identification in your possession while hunting on the refuge.

4. We will limit hunt days to Tuesdays, Wednesdays, and Saturdays during the waterfowl hunting season as established by the State.

5. We only allow shotguns.

6. You must keep firearms unloaded until you are within the designated hunting area (*see* § 27.42(b) of this chapter).

7. Access to the hunt area is by foot or boat in designated areas only. Mobility-impaired hunters should consult with the refuge manager for allowed conveyances.

8. You may possess no more than 25 approved nontoxic shot per day while in the field (*see* § 32.2(k)).

9. This is a waterfowl hunt only. We allow no more than two dogs per waterfowl hunting party. We prohibit dog training on the refuge.

10. During State-established youth days, licensed junior hunters may hunt in the designated hunting area when accompanied by a licensed adult hunter age 18 or older. Adults must possess a valid hunting license; however, we prohibit them carrying a firearm.

11. We prohibit the use of air-thrust and inboard water-thrust boats such as, but not limited to, hovercrafts, airboats, jet skis, watercycles, and waterbikes on all waters within the refuge boundaries.

12. We prohibit hunters launching any boats on the refuge that they cannot portage by hand. A dock and a boat ramp are not available on the refuge.

13. We prohibit pit or permanent blinds.

14. You must remove all temporary blinds, boats, decoys, and all other personal property from the refuge each day (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* [Reserved]

9. Amend § 32.28 Florida by:

a. Revising paragraph D. of Cedar Keys National Wildlife Refuge;

b. Revising paragraph D. of J. N. ''Ding'' Darling National Wildlife Refuge;

c. Revising paragraphs C. and D. of Lake Woodruff National Wildlife Refuge;

d. Revising Lower Suwannee National Wildlife Refuge;

e. Revising paragraphs A.2. through A.5., the introductory text of paragraph D., D.1., D.3., D.4., D.6., D.11., and adding paragraph D.12. of Merritt Island National Wildlife Refuge;

f. Revising paragraph C.1., C.5., C.9. through C.12, and adding paragraph C.13. of St. Marks National Wildlife Refuge; and

g. Revising paragraph C.2. of St. Vincent National Wildlife Refuge to read as follows:

**§ 32.28 Florida.**

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**Cedar Keys National Wildlife Refuge**

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*D. Sport Fishing.* We allow salt water sport fishing year-round in accordance with State regulations subject to the following condition: We will close a 300 foot (90 m) buffer zone beginning at mean high tide line and extending into the waters around Seahorse Key to all public entry from March 1 through June 30.

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**J. N. ''Ding'' Darling National Wildlife Refuge**

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*D. Sport Fishing.* We allow fishing and crabbing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit fishing and crabbing in all waters of the Bailey Tract except for Smith Pond and Airplane Canal.

2. We allow fishing and crabbing in all other refuge waters except in areas designated as ''closed to public entry''.

3. We prohibit the taking of horseshoe crabs, stone crabs, or spider crabs.

4. We prohibit the taking of blue crabs for commercial purposes.

5. We allow the recreational take of blue crabs within 150 feet (45 m) of the Wildlife Drive only with the use of dip nets.

6. Beyond 150 feet (45 m) of the Wildlife Drive we allow recreational take of blue crabs with baited lines and traps only if such devices are continuously attended/monitored and removed at the end of each day. ''Attended/monitored'' means that all devices used in the capture of blue crabs must be within the immediate view of the sport crabber.

7. The daily limit of blue crabs is 20 per person, of which no more than 10 shall be females.

8. We prohibit the use of cast nets within 150 feet (45 m) of a water-control structure on the Wildlife Drive.

9. We prohibit the use of personal watercraft, air-thrust boats, and hovercraft.

10. We prohibit kite-surfing or kite-boarding, wind-surfing or sail-boarding, or any similar type of activities.

11. We prohibit vessels exceeding the slow speed/minimum wake in refuge waters.

12. We only allow vessels propelled by polling, paddling, or floating in the posted ''no-motor zone'' of the Ding Darling Wilderness Area. All motors, including electric motors, must be in a nonuse position (out of the water) when in the ''no-motor zone''.

13. We prohibit camping on all refuge lands and overnight mooring of vessels on all refuge waters.

14. You may only launch vessels at designated sites on the refuge.

**Lake Woodruff National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following condition: We require refuge permits.

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow fishing from legal sunrise to legal sunset.

2. We prohibit the use of airboats on the refuge.

3. We prohibit commercial fishing or the taking of frogs or turtles (*see* § 27.21 of this chapter).

4. We prohibit the use of snatch hooks in the refuge impoundments.

5. When boating, you must slow down and observe all manatee speed zones and caution areas.

**Lower Suwannee National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunters to possess and carry signed refuge hunt permits for all hunts.

2. We designated open and closed refuge hunting areas on the map in the refuge hunt permit that the hunter must possess and carry.

3. You must park vehicles in a manner that does not block roads or gates (*see* § 27.31(h) of this chapter).

4. We prohibit the use of ATVs (*see* § 27.31(f) of this chapter).

5. We prohibit horses.

6. We prohibit possession of a loaded firearm or bow and arrow (*see* § 27.42(b) of this chapter) while on a refuge road right-of-way designated for motorized vehicle travel or in any vehicle or boat. We define ''loaded'' as shells in the chamber or magazine or percussion cap on a muzzleloader, or arrow notched in a bow.

7. We prohibit hunting from refuge roads open to public vehicle travel.

8. We prohibit construction of permanent blinds or stands.

9. In addition to State hunter education requirements, an adult (parent or guardian) age 21 or older must supervise and must remain within sight of and in normal voice contact of the youth hunter age 15 and under. Parents or adult guardians are responsible for ensuring that hunters under age 16 do not engage in conduct that would constitute a violation of the refuge regulations. An adult may supervise no more than two youths.

10. We prohibit all commercial activities, including guiding or participating in a guided hunt.

11. We prohibit target practice or any nonhunting discharge of firearms (*see* § 27.42 of this chapter).

12. We prohibit marking any tree, or other refuge feature, with flagging, litter, paint, or blaze.

13. We allow marking trails with reflective markers, but you must remove the markers (*see* §§ 27.93 and 27.94 of this chapter) at the end of the refuge deer hunting season.

14. Hunters utilizing the refuge are subject to inspection of licenses, permits, hunting equipment, bag limits, vehicles, and their contents during compliance checks by refuge or State law enforcement officer.

15. Hunters must be at their vehicles by 1 hour after legal shooting time.

*B. Upland Game Hunting.* We allow hunting of gray squirrel, armadillo, opossum, rabbit, raccoon, coyote, and beaver on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A15 apply.

2. The refuge upland game hunting season opens on the Monday after the refuge limited hog hunt closes and ends on February 28.

3. You may only possess .22 caliber rimfire rifle (but not .22 magnum) firearms (*see* § 27.42 of this chapter) or shotguns with shot no larger than #4 common or bows with arrows that have judo or blunt tips. We prohibit possession of arrows capable of taking big game during the upland game hunting season.

4. We allow night hunting in accordance with State regulations for raccoon and opossum on Wednesday through Saturday nights from legal sunset until legal sunrise during the month of February.

*C. Big Game Hunting.* We allow hunting of big game on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A15 apply.

2. We prohibit the use of hunting and tracking dogs for all deer and hog hunts.

3. We require quota hunt permits (issued through a random draw) for the limited deer gun hunt, limited hog hunt, and limited youth gun deer hunt. They cost $12.50.

4. Quota hunt permits are nontransferable.

5. Hunters may only use archery equipment in accordance with State archery regulations during the refuge archery season.

6. Hunters may only use muzzleloading firearms (*see* § 27.42 of this chapter) in accordance with State muzzleloader regulations during the refuge muzzleloader season.

7. We prohibit hunting from a tree in which a metal object has been driven (*see* § 32.2(i)).

8. You may leave temporary tree stands on the refuge starting on the last weekend of August, but you must remove them by the last day of the general gun hunting season (*see* § 27.93 of this chapter).

9. All hunters (including all persons accompanying hunters) must wear a minimum of 500 square inches (3,250 $cm^2$) of fluorescent orange visible above the waistline while hunting during all refuge deer gun hunts.

10. We prohibit the use of organized drives for taking or attempting to take game.

11. The refuge general gun season begins on the opening Saturday of the Florida State Central Management Zone, General Gun season and ends on the following Friday. It reopens on the Monday after the refuge limited deer season and ends on the following Sunday. The refuge general gun season lasts 14 days.

12. The refuge limited either-sex deer hunt is on the second Saturday and Sunday of the State Central Management Zone General Gun season. This coincides with the opening of the State's either-sex hunt deer hunting season.

13. The youth limited Gun Deer Hunt is the Saturday and Sunday following the close of the refuge general gun season.

14. The refuge limited hog hunt begins on the first Monday after the Florida State Central Management Zone General Gun (antlered deer and wild hog) season closes, and ends on the following Sunday.

15. During the limited youth hunt, an adult age 21 or older must accompany the youth, age 15 and under, but only the youth hunter may hunt and handle the firearm.

16. We confine the limited youth hunt to the Levy County portion of the refuge, and hunters must access the refuge from Levy County Road 347.

17. We allow hunting of deer (except spotted fawns), feral hog (no size or bag limit), gray squirrel, rabbit, armadillo, opossum, raccoon, beaver, and coyote during the archery season.

18. Hunters may take deer, with one or more antlers at least 5 inches (12.5 cm) in length visible above the hairline, and feral hog (no bag or size limit) during the muzzleloader and general-gun season.

19. Hunters may take hog (no size or bag limit), and a maximum of two deer per day, during the limited deer gun hunt and limited youth gun deer hunt, except only one deer may be a buck for each of the 2-day limited hunts.

20. Hunters may take hog (no size or bag limit) during the limited hog hunt.

21. We prohibit all other public entry or use of the hunting area during the limited hog, limited gun, and limited youth deer hunts. During the limited gun hunt and limited hog hunt, the Dixie Mainline road will remain open to all public vehicles, but we prohibit firearms except for permit holders.

22. Hunters must check all game harvested during all deer and hog hunts.

23. You may only take turkey during the State spring turkey hunting season.

24. You may only take bearded turkeys during the spring turkey hunt.

25. Shooting hours for spring turkey begin ½ hour before legal sunrise and end at 1 p.m.

26. We only allow shotguns with shot no larger than size 2 common shot or bows and arrows for spring turkey hunting.

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Anglers may take game and nongame fish only with pole and line or rod and reel.

2. We prohibit taking of frogs and turtles (*see* § 27.21 of this chapter).

3. We prohibit leaving boats on the refuge overnight (*see* § 27.93 of this chapter).

4. We prohibit consumption of alcohol or possession of open alcohol containers in the public use areas of Shired Island boat launch/fishing and parking lot area and the Shell Mound fishing/recreational area (*see* § 32.2(j)).

**Merritt Island National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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2. You must possess and carry a refuge waterfowl hunting quota permit while hunting areas 1 or 4, from the beginning of the regular waterfowl season through December 31.

3. You may hunt Wednesdays, Saturdays, Sundays, and all Federal holidays that fall within the State's waterfowl season.

4. You may hunt in four designated areas of the refuge as delineated in the refuge hunting regulations map. We prohibit hunters entering the normal or expanded restricted areas of the Kennedy Space Center.

5. You may only hunt on refuge-established hunt days from legal shooting time until 1 p.m.

* * * * *

*D. Sport Fishing.* We allow you to fish, crab, clam, oyster, and shrimp in designated areas of the refuge as delineated in the refuge fishing regulations map in accordance with State regulations subject to the following conditions:

1. You must possess and carry a current, signed refuge fishing permit at all times while fishing on the refuge.

* * * * *

3. We allow launching of boats at night only from Bair's Cove, Beacon 42, and Bio Lab boat ramps.

4. We prohibit crabbing or fishing, and access for the purpose of crabbing or fishing, from Black Point Wildlife Drive or any side road connected to Black Point Wildlife Drive except L Pond Road.

* * * * *

6. Anglers and crabbers must attend their lines at all times.

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11. We prohibit fishing within the normal or expanded restricted areas of the Kennedy Space Center.

12. We prohibit the use of internal combustion engines within the two zones in Mosquito Lagoon. The zones include the posted waters located north of WSEG Boat Ramp and west of the Intra Coastal Waterway and the posted waters on Tiger Shoals extending from the northeast refuge boundary southward to the waters just south of Preachers Island.

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**St. Marks National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

1. We require refuge permits issued by lottery. Lottery applications are available at the refuge office each year beginning in July. There is a fee for permits. Permits are nontransferable. There is an additional fee for duplicate permits. Each hunter must possess and carry a signed permit when participating in a hunt. Prior to hunting each day, you must check-in at a hunt check station as specified in the refuge hunt brochure. You must check out upon completion of hunting each day.

* * * * *

5. There is a two-deer limit per hunt as specified in C8 and C9 below, except in the youth hunt, where the limit is one deer per hunt as specified in C11 below. The limit for bearded turkey is one per hunt. There is no limit on feral hog.

* * * * *

9. There is a winter archery/muzzleloader hunt. Hunters may harvest doe deer, antlerless deer, bearded turkey, or feral hog. We define ''antlerless deer'' as deer with antlers less than 1 inch (2.5 cm) above the hairline and ''antlered deer'' as deer with antlers at least 1 inch (2.5 cm) above the hairline. If the first deer you harvest is an antlerless male, you may

harvest another doe or antlerless deer as your second deer. If the first deer you harvest is a doe, you may bring it to the check station, and we will give you a permit to harvest an antlered deer. With the antlered deer permit, you may harvest any deer as your second deer. Archery equipment and muzzleloaders must meet the requirements set by the State. We prohibit other weapons in the hunt area (*see* § 27.43 of this chapter). Contact the refuge office for specific dates.

10. There are two modern gun hunts. Modern guns must meet State requirements. We will hold one hunt on the Panacea Unit and one on the Wakulla Unit. You may harvest deer as described in C9 above. You may also harvest one bearded turkey or feral hog (no limit). Contact the refuge office for specific dates.

11. There is one youth hunt, for youths ages 10 to 15, on the St. Marks Unit in an area to be specified in the refuge hunt brochure. Hunters may harvest one deer of either sex or feral hog (no limit). An adult, age 21 or older, must accompany each youth hunter, and each adult may accompany only one youth. The adult must possess a refuge permit. Only the youth hunter may handle or discharge firearms. Contact the refuge office for specific dates.

12. There is one mobility-impaired hunt on the Panacea Unit in the area west of County Road 372. Hunters may harvest doe deer, antlerless deer, bearded turkey, or feral hog. See definition for ''antlerless deer'' in C9 above. We will give each hunter that harvests a doe deer a permit to harvest an antlered deer, as described in C9 above. Hunters may have an able-bodied hunter accompany them. You may transfer permits issued to able-bodied assistants. We limit those hunt teams to two deer per hunt. Contact the refuge office for specific dates.

13. There is one spring gobbler hunt. You may harvest one bearded turkey per hunt. You may only use shotguns to harvest turkey. Contact the refuge officer for specific dates. You must unload and dismantle or case weapons (see § 27.42(b) of this chapter) after 1 p.m.

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**St. Vincent National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

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2. We restrict hunting to three hunt periods: Sambar deer, raccoon, and feral hog—November 17–19; and white-tailed deer, raccoon, and feral hog—December 15–17 and January 5–7. Hunters may check-in and set up camp sites and stands on November 16, December 14, and January 4. Hunters must leave the island and remove all equipment by 11 a.m. on November 20, December 18, and January 8.

* * * * *

10. Amend § 32.29 Georgia by:

a. Revising paragraph D. of Banks Lake National Wildlife Refuge;

b. Adding paragraphs C.18. and C.19. of Blackbeard Island National Wildlife Refuge;

c. Adding paragraph C.18. and C.19. of Harris Neck National Wildlife Refuge;

d. Revising paragraphs B.9., D.1., and D.4. of Piedmont National Wildlife Refuge;

e. Revising paragraph A.1., adding paragraphs A.4., A.5., and B.8., and revising paragraphs C.5. and C.8. of Savannah National Wildlife Refuge; and

f. Adding paragraphs C.19. and C.20. of Wassaw National Wildlife Refuge to read as follows:

**§ 32.29 Georgia.**

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**Banks Lake National Wildlife Refuge**

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*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow the use of pole and line or rod and reel, which the angler must attend at all times.

2. We allow sport fishing after legal sunset; but we prohibit all other activity after legal sunset.

3. We prohibit marking of paths or navigational routes.

4. We prohibit swimming, wading, jet skiing, and water skiing.

**Blackbeard Island National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

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18. Youth hunters age 15 and under must possess and carry a valid hunter education card in order to hunt.

19. Youth hunters age 15 and under must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. One adult may supervise no more than two youth hunters.

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**Harris Neck National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

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18. Youth hunters age 15 and under must possess and carry a valid hunter education card in order to hunt.

19. Youth hunters age 15 and under must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. One adult may supervise no more than two youth hunters.

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**Piedmont National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

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9. We only allow .22 caliber or smaller rimfire firearms for raccoon and opossum hunting.

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*D. Sport Fishing.* * * *

1. We allow fishing from April 1 to September 30.

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4. We allow nonmotorized boats on all ponds designated as open to fishing except the Children's pond. We allow boats with electric motors only in Pond 2A and Allison Lake.

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**Savannah National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

* * *

1. You must possess and carry a signed refuge permit at all times while hunting on the refuge. We only require a fee for the quota youth waterfowl hunt on the Solomon Tract and the wheelchair-dependent hunters' quota deer hunt.

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4. Youth hunters age 15 and under must possess and carry a valid hunter education card in order to hunt.

5. Youth hunters age 15 and under must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. One adult may supervise no more than two youth hunters.

*B. Upland Game Hunting.* * * *

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8. Conditions A4 and A5 apply.

*C. Big Game Hunting.* * * *

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5. We only allow shotguns with slugs, muzzleloaders, and bows for deer and hog hunting throughout the designated hunt area during the November gun hunt and the March hog hunt. However, we allow high-powered rifles north of Interstate Highway 95 only. We prohibit handguns.

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8. Conditions B7, A4, and A5 apply.

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**Wassaw National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

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19. Youth hunters age 15 and under must possess and carry a valid hunter education card in order to hunt.

20. Youth hunters age 15 and under must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. One adult may supervise no more than two youth hunters.

* * * * *

11. Amend § 32.32 Illinois by:

a. Removing paragraphs A.2. and A.3., redesignating paragraph A.4. as A.2., revising paragraph A.2., and revising paragraph D.2. of Chautauqua National Wildlife Refuge;

b. Revising paragraph A.5., adding paragraph A.7.xii., and revising paragraphs B.1., B.2., C.1., and D.1. of Cypress Creek National Wildlife Refuge;

c. Revising the introductory text of paragraph A., adding paragraph A.3., revising the introductory text of paragraph B., adding paragraphs B.1., B.2., and revising paragraphs C. and D. of Emiquon National Wildlife Refuge;

d. Revising the introductory text of paragraph D. and revising paragraphs D.1. and D.2. of Meredosia National Wildlife Refuge;

e. Revising the introductory text of paragraphs B., C., and D. of Middle Mississippi River National Wildlife Refuge;

f. Revising paragraph B.3., revising the introductory text of paragraph C., and revising paragraph D.3. of Port Louisa National Wildlife Refuge;

g. Revising paragraph D.3. of Two Rivers National Wildlife Refuge; and

h. Revising paragraph A.6. of Upper Mississippi River National Wildlife and Fish Refuge to read as follows:

**§ 32.32 Illinois.**

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**Chautauqua National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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2. Hunters must remove boats, decoys, and portable blinds at the end of each day's hunt (*see* §§ 27.93 and 27.94 of this chapter).

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*D. Sport Fishing.* * * *

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2. We allow bank fishing from legal sunrise October 16 to legal sunset January 14 between the boat ramp and the fishing trail in the North Pool and from Goofy Ridge Public Access to west gate of the north pool water control structure.

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**Cypress Creek National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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5. We allow dove hunting beginning on September 1 and continuing on the following Mondays, Wednesdays, and Saturdays throughout the State season.

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7. * * *

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xii. All hunting parties must hunt over a minimum of 12 decoys at each blind site.

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*B. Upland Game Hunting.* * * *

1. Conditions A1, A2, A3, and A4 apply.

2. We prohibit hunting after legal sunset, except we allow raccoon and opossum hunting after legal sunset.

*C. Big Game Hunting.* * * *

1. Conditions A1 and A2 apply.

*D. Sport Fishing.* * * *

1. Conditions A2 and A3 apply.

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**Emiquon National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:

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3. We allow the use of motorized boats at no-wake speeds on all refuge waters.

*B. Upland Game Hunting.* We allow hunting of upland game on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may possess only approved nontoxic shot while hunting all allowed species except wild turkey and coyote (*see* § 32.2(k)). You may possess lead shot for hunting of wild turkey and coyote.

2. We allow access for hunting from 1 hour before legal sunrise until legal sunset.

*C. Big Game Hunting.* We allow hunting of big game on designated areas of the refuge in accordance with State regulations subject to the following condition: Hunters must remove hunting stands at the end of each day's hunt (*see* §§ 27.93 and 27.94 of this chapter).

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit leaving private boats on refuge waters overnight (*see* § 27.93 of this chapter).

2. Condition A3 applies.

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**Meredosia National Wildlife Refuge**

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*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow sport fishing on all areas open to public access from legal sunrise to legal sunset from January 15 to October 15.

2. We allow foot access on refuge land along the east side of Meredosia Lake in Morgan County from legal sunrise to legal sunset from October 16 to January 14. The boat ramp remains open throughout the year for access to Meredosia Lake.

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**Middle Mississippi River National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow hunting of small game, furbearers, turkey, and nonmigratory game birds on the Beaver, Harlow, Meissner, and Wilkinson Island Division in accordance with State regulations subject to the following conditions:

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*C. Big Game Hunting.* We allow hunting of white-tailed deer on the Beaver, Harlow, Meissner, and Wilkinson Island Divisions in accordance with State regulations subject to the following conditions:

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*D. Sport Fishing.* We allow fishing on the Beaver, Harlow, and Wilkinson Island Divisions in accordance with State regulations subject to the following conditions:

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**Port Louisa National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

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3. We allow hunting in designated areas on the Horseshoe Bend Division from September 1 until September 14 and from December 1 until February 28. We allow spring turkey hunting.

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*C. Big Game Hunting.* We allow hunting of white-tailed deer only on Big Timber Division and in designated areas on Horseshoe Bend Division in accordance with State regulations subject to the following conditions:

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*D. Sport Fishing.* * * *

* * * * *

3. We close the following Divisions to all public access: Louisa Division—September 14 until January 1; Horseshoe Bend Division—September

14 until December 1; Keithsburg Division—September 15 until January 1.

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**Two Rivers National Wildlife Refuge**

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*D. Sport Fishing.* * * *

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3. From October 15 through December 31 we close the Batchtown, Gilbert Lake, and Portage Island Divisions, and the portion of the Calhoun Division north and west of the Illinois River Road, to all public access.

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**Upper Mississippi River National Wildlife and Fish Refuge**

*A. Migratory Game Bird Hunting.* * * *

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6. For Pools 12, 13 (excluding the Lost Mound Unit), and 14, we allow the following: hunting from boat blinds or scull boats; construction of permanent blinds from dimensional lumber (however, we prohibit use of nonbiodegradable materials such as metal, plastic, or fiberglass); and use of willow, cattail, bulrush, lotus, arrowhead vegetation, and dead wood on the ground for blind building and camouflage. We prohibit cutting or removing any other trees or vegetation (*see* § 27.51 of this chapter). Hunters must place an identification card with name, address, and telephone number inside the permanent blind. Blinds not occupied by 1 hour before legal sunrise are available on a first-come, first-served basis.

* * * * *

12. Amend § 32.33 Indiana by:

a. Revising paragraphs B., C., and D. of Muscatatuck National Wildlife Refuge; and

b. Revising paragraph B.1., adding paragraph C.3., revising the introductory text of paragraph D. and paragraph D.1. of Patoka River National Wildlife Refuge and Management Area to read as follows:

**§ 32.33 Indiana.**

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**Muscatatuck National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow hunting of wild turkey, quail, squirrel, and rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. For wild turkey hunting, we require a refuge permit.

2. We prohibit discharge of firearms within 100 yards (90 m) of an occupied dwelling.

3. Shotgun hunters may possess only approved nontoxic shot on the refuge (*see* § 32.2(k)).

4. We allow the use of hunting dogs for hunting rabbit and quail only.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge during the State archery and muzzleloader seasons in accordance with State regulations subject to the following conditions:

1. You must possess and carry a refuge permit during the State muzzleloader season.

2. We only allow bow and arrow and muzzleloaders, except that hunters with a State handicapped hunting permit may use crossbows.

3. We prohibit the construction and use of permanent blinds, platforms, or ladders (*see* § 27.92 of this chapter).

4. Condition B2 applies.

5. We allow access to the refuge during posted hours during refuge deer hunts.

6. Hunters may only take one deer per day from the refuge.

7. We allow only permitted muzzleloader hunters during the State muzzleloader season.

8. We allow archery hunting during the refuge-designated seasons.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit the use of boats and belly boats on all refuge waters except for Stanfield Lake and Richart Lake.

2. We only allow fishing with rod and reel or pole and line.

3. We allow fishing from legal sunrise to legal sunset.

4. We prohibit harvesting of frogs and turtles (*see* § 27.21 of this chapter).

**Patoka River National Wildlife Refuge and Management Area**

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*B. Upland Game Hunting.* * * *

1. You may only possess approved nontoxic shot while hunting on the refuge (*see* § 32.3(k)).

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*C. Big Game Hunting.* * * *

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3. We prohibit marking trails with tape, ribbons, paper, paint, tacks, tree blazes, or other devices.

*D. Sport Fishing.* We allow sport fishing in accordance with State regulations on the main channel of the Patoka River, but all other refuge waters are subject to the following conditions:

1. We allow fishing from legal sunrise to legal sunset.

* * * * *

13. Amend § 32.34 Iowa by removing paragraph B.1., redesignating paragraphs B.2. through B.4. as paragraphs B.1. through B.3., and adding a new paragraph B.4. of Neal Smith National Wildlife Refuge to read as follows:

**§ 32.34 Iowa.**

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**Neal Smith National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

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4. We prohibit shooting on or over any refuge road within 50 feet (15 m) from the centerline.

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14. Amend § 32.36 Kentucky by:

a. Revising Clarks River National Wildlife Refuge; and

b. Revising paragraph C.1., and removing paragraph C.5. of Reelfoot National Wildlife Refuge to read as follows:

**§ 32.36 Kentucky.**

* * * * *

**Clarks River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of mourning dove, woodcock, common snipe, Canada and snow goose, coot, and waterfowl listed in 50 CFR 10.13 under DUCKS on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The refuge is a day-use area only, with the exception of legal hunting/fishing activities.

2. We prohibit the use of motorized off-road vehicles (*e.g.*, ATVs) on the refuge (*see* § 27.31(f) of this chapter).

3. We prohibit target practice with any weapon or nonhunting discharge of firearms (*see* § 27.42 of this chapter).

4. We prohibit the use of horses and mules on refuge property during the State muzzleloader and modern gun deer hunts. We allow horseback riding on refuge roads and portions of the abandoned railroad tracks owned by the refuge for access purposes while engaged in wildlife activities. We prohibit horses and mules off these secondary access routes for any reason.

5. You must possess and carry a valid refuge permit while hunting and/or fishing on the refuge.

6. To retrieve or track game from a posted closed area of the refuge, the hunter must first request permission from the refuge manager at 270–527–5770 or the law enforcement officer at 270–703–2836.

7. We prohibit the use of flagging tape, reflective tacks, or nonbiodegradable devices used to identify paths to and mark tree stands, blinds, and other areas.

8. We close those portions of abandoned railroad tracks within the refuge boundary to vehicle access (*see* § 27.31 of this chapter).

9. We prohibit discharge of firearms or carrying loaded firearms on or within 100 feet (90 m) of any home, the abandoned railroad tracks, graveled roads, and hiking trails.

10. We prohibit possession and/or use of herbicides (*see* § 27.51 of this chapter).

11. We prohibit possession or use of alcoholic beverages while hunting (*see* § 32.2(j)).

12. We prohibit the use of electronic calls *with the exception for taking crow during crow season.*

13. An adult, age 21 or older, must supervise all youth hunters, age 15 and under. Youth hunters must remain in sight and normal voice contact with the adult. On small game hunts, the adult may supervise no more than two youths; on big game hunts, the adult may supervise no more than one youth.

14. All persons born after January 1, 1975 must possess a valid hunter education card while hunting.

15. Waterfowl hunters must pick up decoys and equipment (*see* §§ 27.93 and 27.94 of this chapter), unload firearms (*see* § 27.42(b) of this chapter), and be out of the field by 2 p.m. daily during the State waterfowl season.

16. You may only use portable or temporary blinds that must be removed (*see* §§ 27.93 and 27.94 of this chapter) from the refuge daily.

17. We close, as posted, the Sharpe-Elva Water Management Unit from November 1 through March 15 to all entry with the exception of drawn permit holders and their guests.

18. We only allow waterfowl hunting on the Sharpe-Elva Water Management Unit on specified Saturdays and Sundays during the State waterfowl season. We only allow hunting by individuals in possession of a refuge draw permit and their guests. State regulations and the following conditions apply:

i. Application procedures and eligibility requirements are available from the refuge office.

ii. We allow permit holders and up to three guests to hunt their assigned provided blind on the designated date. We prohibit guests in the blind without the attendance of the permit holder.

iii. We prohibit selling, trading, or bartering of permits. This permit is nontransferable.

iv. You may place decoys out Saturday morning at the beginning of the hunt, and you must remove them by Sunday at the close of the hunt (*see* §§ 27.93 and 27.94 of this chapter).

v. We prohibit watercraft in the Sharpe-Elva Water Management Unit, except for drawn permit holders to access their assigned blinds and retrieve downed birds as needed.

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, quail, raccoon, opossum, crow, and coyote on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A14 apply.

2. We close squirrel, rabbit, and quail seasons during muzzleloader and modern gun deer hunts.

3. You may not kill or cripple a wild animal without making a reasonable effort to retrieve the animal and harvest a reasonable portion of that animal and include it in your daily bag limit.

4. You may use only rimfire rifles, pistols, shotguns, and legal archery equipment for taking upland game.

5. We prohibit possession and use of lead ammunition, except that you may use rimfire rifle and pistol lead ammunition no larger than .22 caliber for upland game hunting.

6. You may hunt coyote during any daytime refuge hunt with weapons and ammunition allowed for that hunt.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A15 and B3 apply.

2. We only allow the use of portable and climbing stands. You may place stands in the field no earlier than 2 weeks prior to the opening of deer season, and you must remove them from the field within 1 week after the season closes (*see* §§ 27.93 and 27.94 of this chapter). The hunter's name and address must appear on all stands left in the field.

3. You must use safety belts at all times when occupying the tree stands.

4. We prohibit organized deer drives of two or more hunters. We define ''drive'' as: the act of chasing, pursuing, disturbing, or otherwise directing deer so as to make animals more susceptible to harvest.

*D. Sport Fishing.* We allow fishing and frogging on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A15 apply.

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**Reelfoot National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

1. Conditions B1 through B6 apply.

* * * * *

15. Amend § 32.37 Louisiana by:

a. Revising the introductory text of paragraph A., revising paragraph A.8., adding paragraphs A.12., and A.13., revising the introductory text of paragraph B., revising paragraph B.4., and adding paragraph C.10. of Big Branch Marsh National Wildlife Refuge;

b. Revising paragraph A.6. of Black Bayou Lake National Wildlife Refuge;

c. Adding paragraphs A.9. and A.10., revising paragraph B.7., adding paragraph B.8. and B.9., revising paragraphs C.1., C.3., and C.9., and revising paragraphs D.2. and D.4., and adding paragraph D.6. of Boque Chitto National Wildlife Refuge;

d. Revising paragraphs A.5. and A.6. of Cameron Prairie National Wildlife Refuge;

e. Revising paragraphs A.1. and A.8., adding paragraphs A.21. through A.25., revising paragraphs B.1. and C.1., redesignating paragraphs C.3. through C.8. as paragraphs C.4. through C.9., adding a new paragraph C.3., revising paragraph C.4., and adding paragraphs C.9., D.10. and D.11. of Cat Island National Wildlife Refuge;

f. Revising paragraphs A.2. and A.4., adding paragraphs A.15. and A.16., revising paragraphs B.1. and B.8., adding paragraphs B.9. and B.10., revising paragraphs C.1., C.2., C.3., C.8., adding paragraph C.11., revising paragraph D.1., and adding paragraph D.8. of Catahoula National Wildlife Refuge;

g. Revising paragraph A.6. of D'Arbonne National Wildlife Refuge;

h. Revising paragraph A.12., adding paragraph A.13., and revising paragraph C.1. of Delta National Wildlife Refuge;

i. Revising paragraph A.1., adding paragraphs A.23. through A.29., revising paragraphs B.1., C.1., C.2., C.3., and C.4., adding paragraph C.9., and revising paragraphs D.1. and D.8., and adding paragraphs D.13. through D.15. of Grand Cote National Wildlife Refuge;

j. Revising the heading and introductory text of paragraph A., revising paragraphs A.1., A.15., A.16., adding paragraphs A.21., A.22., and A.23. revising paragraphs B.1., B.2., C.1., C.3., C.4., C.6., C.11., C.12., adding paragraphs C.15. through C.17., revising paragraph D.1., and adding paragraphs D.9. and D.10. of Lake Ophelia National Wildlife Refuge; and

k. Revising paragraph A.8. of Upper Ouachita National Wildlife Refuge to read as follows:

**§ 32.37 Louisiana.**

* * * * *

**Big Branch Marsh National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, coot, goose, snipe, rail, and gallinule on designated areas of the refuge during the State waterfowl season in accordance with State regulations subject to the following conditions:

* * * * *

8. The refuge is open from ½ hour before legal sunrise to ½ hour after legal sunset.

* * * * *

12. Hunters may not enter the refuge before 4 a.m.

13. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, woodcock, and quail on designated areas of the refuge in accordance with State regulations subject to the following conditions:

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4. Conditions A5 through A13 apply.

* * * * *

*C. Big Game Hunting.* * * *

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10. Conditions A5 through A13 apply.

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**Black Bayou Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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6. We prohibit hunting within 150 feet (45 m) of the maintained right-of-way of roads, from or across ATV trails (*see* § 27.31 of this chapter). We prohibit hunting within 50 feet (15 m), or trespassing on above-ground oil or gas production facilities.

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**Boque Chitto National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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9. We allow primitive camping within 100 feet (30 m) of designated streams. These include either bank of the Boque Chitto River, Wilson Slough, and West Pearl River south of Wilson Slough, refuge lands along the East Pearl River, and Holmes Bayou.

10. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

*B. Upland Game Hunting.* * * *

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7. Conditions A3 (upland game hunts), and A5 through A10 apply.

8. During the refuge deer gun season, all hunters except waterfowl hunters must wear a minimum of 400 square inches (2,600 $cm^2$) of unbroken hunter orange as the outermost layer of clothing on the chest and back, and in addition we require a hat or cap of unbroken hunter orange.

9. We allow upland game hunting during the open State season.

*C. Big Game Hunting.* * * *

1. Conditions A3 (one adult may only supervise one youth hunter during refuge Gun Deer Hunts), A5 through A7, A10, B5, and B8 apply.

* * * * *

3. We allow archery deer hunting during the open State archery season.

* * * * *

9. You may take hogs as incidental game while participating in the refuge archery, primitive weapon and general gun deer hunts only. Additionally, you may take hogs typically during varying dates in January and February, and you must only take them with the aid of trained hog-hunting dogs from legal sunrise until legal sunset. During the special hog season in January and February, hunters may use pistol or rifle ammunition not larger than .22 caliber or a shotgun with nontoxic (steel, bismuth) shot to kill hogs after they have been caught by dogs.

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*D. Sport Fishing.* * * *

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2. Conditions A9 and B5 apply.

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4. We allow boats in the fishing ponds at the Pearl River Turnaround that do not have gasoline-powered engines attached. These boats must be hand launched into the ponds.

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6. We allow trotlines but the last five feet of trotline must be 100% cotton.

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**Cameron Prairie National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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5. We allow dove hunting on designated areas during the first split of the State dove season only.

6. We allow snipe hunting on designated areas for the remaining portion of the State snipe season following closure of the State Ducks and Coots season in the West Zone.

* * * * *

**Cat Island National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

* * *

1. We require hunters and anglers age 16 and older to purchase and carry a signed refuge special recreational activity permit.

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8. You must report all harvest game at the refuge check station upon leaving the refuge.

* * * * *

21. We prohibit accessing refuge property by boat from the Mississippi River.

22. Persons using the refuge are subject to inspection of permits, licenses, hunting equipment, bag limits, and boats and vehicles by law enforcement officers.

23. We allow nonmotorized or electric-powered boats only.

24. We prohibit trapping.

25. We prohibit the possession of saws, saw blades, or machetes.

*B. Upland Game Hunting.* * * *

1. Conditions A1 through A17, A19, A21, and A22 apply.

* * * * *

*C. Big Game Hunting.* * * *

1. Conditions A1 through A17, A19, and A21 through A22 apply.

* * * * *

3. There will be two or three lottery gun hunts (muzzleloader/rifle) in November and December (*see* refuge brochure for details). We will set hunt dates in July, and we will accept applications from August 1 through August 31. Applicants may apply for more than one hunt. There is a $5 application fee per person for each hunt application and a $15 per person permit for each successful applicant. We will notify successful applicants by September 5.

4. We allow only portable deer stands. Hunters may erect stands 2 days before the beginning of the refuge archery season and must remove them the last day of the State archery season (*see* § 27.93 of this chapter).

5. We prohibit the use of dogs to trail wounded deer or hogs.

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9. We prohibit driving or screwing nails, spikes, or other metal objects into trees or hunting from any tree into which such an object has been driven (*see* § 32.2(i)).

*D. Sport Fishing.* * * *

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10. We prohibit boat launching by trailer from all refuge roads and parking lots.

11. We prohibit the harvest of frogs or turtles (*see* § 27.21 of this chapter).

**Catahoula National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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2. We allow goose, duck, and coot hunting on the Bushley Bayou Unit on Tuesdays, Thursdays, Saturdays, and Sundays only from ½ hour before legal sunrise until 12 p.m. (noon) during the State season.

* * * * *

4. We allow ATVs on ATV trails (*see* § 27.31 of this chapter) designated on the refuge hunt/fish permit from September 1 through the end of rabbit season. We open Bushley Creek, Black Lake, Boggy Bayou, Round Lake, Dempsey Lake Roads, and that portion of Minnow Ponds Road at Highway 8 to Green's Creek Road and then south to Green's Creek Bridget to ATVs year-round. We prohibit the use of an ATV on graveled roads designated for motor vehicle traffic unless otherwise posted. We only allow ATVs for wildlife-dependent activities. We define an ATV as an off-road vehicle (not legal for highway use) with factory specifications not to exceed the following: weight 750 lbs. (337.5 kg), length 85 inches (212.5 cm), and width 48 inches (120 cm). We restrict ATV tires to those no larger than 25 x 12 with a maximum 1 inch (2.5 cm) lug height and a maximum allowable tire pressure of 7 psi as indicated on the tire by the manufacturer.

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15. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds. We only allow dogs after the last deer-muzzleloader hunt, except when we allow them for waterfowl hunting throughout the entire refuge waterfowl season.

16. We prohibit camping or parking overnight on the refuge.

*B. Upland Game Hunting.* * * *

1. Conditions A1, A4 (at the Bushley Bayou Unit), A7 through A14, and A16 apply.

* * * * *

8. At the Headquarters Unit, we close upland game hunting during high water conditions with an elevation of 42 feet (12.6 m) or above as measured at the Corps of Engineers center of the lake gauge on Catahoula Lake. At the Bushley Bayou Unit, we close upland game hunting during high water conditions with an elevation of 44 feet (13.2 m) or above as measured at the Corps of Engineers center of the lake gauge on Catahoula Lake.

9. On the Bushley Bayou Unit we allow the use of dogs to hunt squirrel, rabbit, and raccoon only after the last deer-muzzleloader hunt.

10. Dog owners must place their names and phone numbers on the collars of all of their dogs.

*C. Big Game Hunting.* * * *

1. Conditions A1, A4 (at the Bushley Bayou Unit), A7 through A9, A12 through A14, A16, and B4 through B8 (big game hunting) apply.

2. At the Bushley Bayou Unit, we allow deer-archery hunting during the State archery season, except when closed during deer-gun and deer-muzzleloader hunts. We allow either-sex, deer-muzzleloader hunting during the first segment of the State season for Area 1, weekdays only (Monday through Friday) and the third weekend after Thanksgiving Day. We allow either-sex, deer-gun hunting for the Friday, Saturday, and Sunday immediately following Thanksgiving Day and for the second weekend following Thanksgiving Day.

3. At the Headquarters Unit, we allow deer-archery hunting during the State archery season, except when closed during the deer-gun hunt south of the French Fork of the Little River. We allow either-sex, deer-gun hunting on the fourth weekend after Thanksgiving Day on the area south of the French Fork of the Little River.

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8. We prohibit the use of organized drives for taking or attempting to take game or using pursuit dogs.

* * * * *

11. We prohibit the use of dogs to trail wounded deer.

*D. Sport Fishing.* * * *

1. Conditions A4 (at the Bushley Bayou Unit), A7, A9, A13 (as a fishing guide), A14, A16, B5, and B7 apply.

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8. We prohibit bank fishing on Bushley Creek and fishing in Black Lake, Dempsey Lake, Long Lake, Rhinehart Lake, and round Lake, during deer-gun and muzzleloader hunts. We prohibit fishing in Black Lake, Dempsey Lake, Long Lake, Rhinehart Lake, and Round Lake during waterfowl hunts.

**D'Arbonne National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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6. We prohibit hunting within 150 feet (45 m) of the maintained right-of-way roads, from or across ATV trails (*see* § 27.31 of this chapter). We prohibit hunting within 50 feet (15 m) or trespassing on above-ground oil or gas production facilities.

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**Delta National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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12. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of weather such payment is for guiding, outfitting, lodging, or club membership.

13. We open the refuge from ½ hour before legal sunrise to ½ hour after legal sunset, with the exception that hunters may enter the refuge earlier, but not before 4 a.m. Condition A10 applies.

* * * * *

*C. Big Game Hunting.* * * *

1. For archery hunting of deer and hogs, conditions A4 through A13 apply. For A11 each adult may supervise no more than one youth hunter during big game hunting.

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**Grand Cote National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

* * *

1. We require hunters and anglers age 16 and older to purchase and carry a signed refuge special recreational activity permit.

* * * * *

23. There will be space-blind waterfowl hunts on designated sections of the refuge during the regular State waterfowl season (*see* refuge brochure for details). Hunt dates will be Wednesdays and Saturdays until 12 p.m. (noon). There will be a random drawing on each hunt day to select participants. The drawing for each hunt day will be approximately 2 hours before legal sunrise. We will limit blinds to three persons. We will set hunt dates in September, subject to water availability, after the State sets the season.

24. There will be youth-only lottery waterfowl hunts on designated sections of the refuge during the regular State waterfowl season (*see* refuge brochure for details). We will determine hunt dates after the State sets the waterfowl season and limit the hunts to no more than five per season. We will accept applications from November 1 through November 21. We will notify successful applicants by mail.

25. There may be special youth, women, and disabled hunter dove hunts

(subject to cropland availability) during the regular State dove season (*see* refuge brochure for details). We will determine hunt dates after the State sets the season. We will determine the number of hunt days and participants by location of available cropland. We will accept applications from July 1 through July 31, and we may only select individuals for one hunt date. We will notify successful applicants by mail.

26. Individuals utilizing the refuge are subject to inspections of permits, licenses, hunting equipment, bag limits, and boats and vehicles by law enforcement officers.

27. We allow nonmotorized or electric-powered boats only.

28. We prohibit the possession of saws, saw blades, or machetes.

29. We prohibit trapping.

*B. Upland Game Hunting.* * * *

1. Conditions A1 through A16, A20, and A26 apply.

* * * * *

*C. Big Game Hunting.* * * *

1. Conditions A1 through A16, A20, and A26 apply.

2. We allow archery-only deer hunting on certain sections of the refuge from October 1 through November 30 (*see* refuge brochure for details).

3. We allow only portable deer stands (*see* §§ 27.93 and 27.94 of this chapter). Deer stands must have the owner's name, address, and phone number clearly printed on the stand.

4. We prohibit hunters to drive deer or to use pursuit dogs. We prohibit the use of dogs to trail wounded deer or hogs.

* * * * *

9. We prohibit driving or screwing nails, spikes, or other metal objects into trees or hunting from any tree into which such an object has been driven (*see* § 32.2(i)).

*D. Sport Fishing.* * * *

1. Conditions A11, A26, C7, and C8 apply

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8. You may harvest 100 lbs. (45 kg) of crawfish per person per day.

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13. We prohibit the harvest of frogs or turtles (*see* § 27.21 of this chapter).

14. We only allow bank fishing in Coulee des Grues along Little California Road.

15. We prohibit launching boats, put or placed, in Coulee des Grues from refuge property.

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**Lake Ophelia National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, woodcock, snipe, and mourning dove on designated areas of the refuge, as shown in the refuge hunting brochure map, in accordance with State regulations subject to the following conditions:

1. We require hunters and anglers age 16 and older to purchase and carry a signed refuge special recreational activity permit.

* * * * *

15. We allow motors up to 25 hp in Possum Bayou (north of Boat Ramp), Palmetto Bayou, Westcut Lake, Pt. Basse, and Nicholas Lake.

16. We allow electric-powered or nonmortorized boats in Dooms Lake, Lake Long, and Possum Bayou (south of Boat Ramp).

* * * * *

21. We will allow incidental take of mourning dove while migratory bird hunting on days open to waterfowl hunting.

22. Persons using the refuge are subject to inspections of permits, licenses, hunting equipment, bag limits, boats, and vehicles by law enforcement officers.

23. We prohibit trapping.

*B. Upland Game Hunting.* * * *

1. Conditions A1 through A16, A19, and A22 apply.

2. We allow squirrel and rabbit hunting in Hunt Unit 2B from the opening of the State season through December 15.

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*C. Big Game Hunting.* * * *

1. Conditions A1 through A3, A5 through A16, A19, and A22 apply.

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3. We allow archery hunting from November 15 through January 1 and January 23 to the end of the State archery season except during the youth and muzzleloader deer hunts when we prohibit archery hunting.

4. We allow archery deer hunting in Hunt Units 1B and 2B from November 15 through December 15.

* * * * *

6. We allow only portable deer stands. Hunters may erect deer stands 2 days before the beginning of the refuge archery season and must remove them the last day of the State archery season.

* * * * *

11. We allow electric-powered or nonmotorized boats in Lake Ophelia from November 1 through December 15.

12. You may kill one deer of either sex per day during the first refuge archery season, and you may kill antlered bucks only during the second refuge archery season.

* * * * *

15. There will be three lottery muzzleloader hunts (*see* refuge brochure for details). We will set hunt dates in July, and we will accept applications from August 1 through August 31. Applicants may NOT apply for more than one hunt. There is a $5 nonrefundable application fee per person for each hunt application and a $15 per person permit for each successful applicant. We will notify successful applicants by September 15.

16. There will be two lottery deer hunts for youth ages 12 to 15 (*see* refuge brochure for details). We will set hunt dates in July, and we will accept applications from November 1 through November 21. We will provide blinds. We will require successful applicants to pass a shooting proficiency test in order to qualify for the hunt. We will notify successful applicants by mail.

17. We prohibit driving or screwing nails, spikes, or other metal objects into trees or hunting from any tree in which such an object has been driven (*see* § 32.2(i)).

*D. Sport Fishing.* * * *

1. Conditions A1, A3, A5 through A9, A17, A19 (remove boats (*see* § 27.93 of this chapter)) and A22 apply.

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9. We prohibit the harvest of frogs or turtles (*see* § 27.21 of this chapter).

10. We prohibit crawfishing.

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**Upper Ouachita National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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8. We prohibit hunting within 150 feet (45 m) of the maintained right-of-way of roads and from or across ATV trails (*see* § 27.31 of this chapter). We prohibit hunting within 50 feet (15 m) or trespassing on above-ground oil or gas production facilities.

* * * * *

16. Amend § 32.38 Maine by:

a. Revising paragraphs A., B., and C. of Moosehorn National Wildlife Refuge;

b. Revising the introductory text of paragraph A., revising paragraphs A.5. and A.6., and adding paragraphs A.7. and A.8., revising paragraph B., revising paragraphs C.1., C.3, C.5., C.6., C.7., C.8., and adding paragraph C.9., and revising paragraph D. of Rachel Carson National Wildlife Refuge; and

c. Revising Sunkhaze Meadows National Wildlife Refuge to read as follows:

**§ 32.28 Maine.**

* * * * *

**Moosehorn National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, American

woodcock, and Wilson's snipe on designated areas of the Baring and Edmunds Division of the refuge in accordance with State regulations subject to the following conditions:

1. We require every hunter to possess and carry a personally signed refuge hunting permit. Permits and regulations are available at checkpoints throughout the refuge.

2. You must complete a Hunter Information Card at a self-clearing check station after each hunt before leaving the refuge.

3. We allow hunters to enter the refuge ½ hour before legal shooting hours, and they must exit the refuge by ½ hour past legal shooting hours.

4. You may hunt American woodcock and Wilson's snipe on the Edmunds Division and that part of the Baring Division that lies west of State Route 191.

5. You may hunt waterfowl (duck and goose) in that part of the Edmunds Division that lies north of Hobart Stream and west of U.S. Route 1, and in those areas east of U.S. Route 1, and in that portion of the Baring Division that lies west of State Route 191.

6. We prohibit hunting of waterfowl in the Nat Smith Field and Marsh or Bills Hill Ponds on the Edmunds Division.

7. We prohibit construction or use of any permanent blind.

8. You may only use portable or temporary blinds.

9. You must remove portable or temporary blinds and decoys from the refuge following each day's hunt (*see* §§ 27.93 and 27.94 of this chapter).

10. We prohibit motorized or mechanized vehicles and equipment in designated Wilderness Areas. This includes all vehicles and items such as winches, pulleys, and wheeled game carriers. Hunters must remove animals harvested within the Wilderness Areas by hand without the aid of mechanical equipment of any type.

*B. Upland Game Hunting.* We allow hunting of ruffed grouse, snowshoe hare, red fox, red squirrel, gray squirrel, raccoon, skunk, and woodchuck on designated areas of the Baring and Edmunds Divisions of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, and A10 apply.

2. We allow hunters to enter the refuge ½ hour before legal shooting hours, and they must exit the refuge by ½ hour past legal shooting hours except for hunters pursuing raccoons at night.

3. During the firearms big game seasons, you must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 $cm^2$) of solid-colored, hunter-orange clothing or material.

4. We allow the hunting of ruffed grouse, snowshoe hare, red fox, red squirrel, gray squirrel, raccoon, skunk, and woodchuck on the Edmunds Division and that part of the Baring Division that lies west of State Route 191.

5. We prohibit hunting on refuge lands after March 31.

6. You must register with the refuge office prior to hunting raccoon or red fox with trailing dogs.

*C. Big Game Hunting.* We allow hunting of black bear, bobcat, eastern coyote, moose, and white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A10, B3, and B5 apply.

2. We allow hunters to enter the refuge ½ hour before legal shooting hours, and they must exit the refuge by ½ hour past legal shooting hours, except for hunters pursuing eastern coyotes at night.

3. We allow bear hunting from October 1 to the end of the State Prescribed Season.

4. We allow eastern coyote hunting from October 1 to March 31 annually.

5. If you harvest a bear, deer, or moose on the refuge, you must notify the refuge office in person or by phone within 24 hours and make the animal available for inspection by refuge personnel.

6. We prohibit construction or use of permanent tree stands, blinds, or ladders.

7. You must use only portable tree stands, blinds, and ladders.

8. You must clearly label any tree stand, blind, or ladder left on the refuge overnight with your name, address, phone number, and hunting license number.

9. You must remove all tree stands, blinds, and ladders from the refuge on the last day of the muzzleloader deer season (*see* §§ 27.93 and 27.94 of this chapter).

10. You may hunt black bear, eastern coyote, and white-tailed deer during the State archery and firearms deer seasons on that part of the Baring Division that lies east of State Route 191.

11. You may hunt black bear, bobcat, eastern coyote, moose, and white-tailed deer on the Edmunds Division and that part of the Baring Division that lies west of State Route 191.

12. You may only use a long, recurve, or compound bow to hunt during the archery deer season, and a muzzleloader to hunt during the deer muzzleloader season on that part of the refuge that lies east of Route 191.

13. You must register with the refuge office prior to hunting black bear, bobcat, or eastern coyote with trailing dogs.

14. We prohibit hunting in the following areas:

i. The South Magurrewock Area: The boundary of this area begins at the intersection of the Charlotte Road and U.S. Route 1; it follows the Charlotte Road in a southerly direction to a point just south of the fishing pier and observation blind, where it turns in an easterly direction, crossing the East Branch of the Magurrewock Stream, and proceeds in a northerly direction along the upland edge of the Upper and Middle Magurrewock Marshes to U.S. Route 1 where it follows Route 1 in a southerly direction to the point of origin.

ii. The North Magurrewock Area: The boundary of this area begins where the northern exterior boundary of the refuge and Route 1 intersect; it follows the boundary line in a westerly direction to the railroad grade where it follows the main railroad grade and refuge boundary in a southwest direction to the upland edge of the Lower Barn Meadow Marsh; it then follows the upland edge of the marsh in a southerly direction to U.S. Route 1, where it follows Route 1 to the point of origin.

iii. The posted safety zone around the refuge headquarters complex: The boundary of this area starts where the southerly edge of the Horse Pasture Field intersects with the Charlotte Road. The boundary follows the southern edge of the Horse Pasture Field, across the abandoned Maine Central Railroad grade, where it intersects with the North Fireline Road. It follows the North Fireline Road to a point near the northwest corner of the Lane Construction Tract. The line then proceeds along a cleared and marked trail in a northwesterly direction to the Barn Meadow Road. It proceeds south along the Barn Meadow Road to the intersection with the South Fireline Road, where it follows the South Fireline Road across the Headquarters Road to the intersection with the Mile Bridge Road. It then follows the Mile Bridge Road in a southerly direction to the intersection with the Lunn Road, then along the Lunn Road leaving the road in an easterly direction at the site of the old crossing, across the abandoned Maine Central Railroad grade to the Charlotte Road (directly across from the Moosehorn Ridge Road gate). The line follows the Charlotte Road in a northerly direction to the point of origin.

iv. The Southern Gravel Pit: The boundary of this area starts at a point

where Cranberry Brook crosses the Charlotte Road and proceeds south along the Charlotte Road to the Barin/Charlotte Town Line, east along the Town Line to a point where it intersects the railroad grade where it turns in a northerly direction, and follows the railroad grade to Cranberry Brook, following Cranbettery Brook in a westerly direction to the point of origin.

* * * * *

**Rachel Carson National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, woodcock, and snipe in accordance with State regulations on designated areas of the Brave Boat Harbor, Lower Wells, Upper Wells, Mousam River, Goose Rocks, and Spurwink River Divisions of the refuge subject to the following conditions:

* * * * *

5. You may use seasonal blinds with a Special Use Permit. A permitted seasonal blind is available to permitted hunters on a first-come, first-served basis. The permit holder for the blind is responsible fore the removal of the blind at the end of the season and compliance with all conditions of the Special Use Permit. You must remove temporary blinds, decoys, and boats from the refuge each day (*see* §§ 27.93 and 27.94 of this chapter).

6. We open the refuge to hunting during the hours stipulated by State regulations but no longer than ½ hour before legal sunrise to ½ hour after legal sunset. We close the refuge to night hunting. You must unload all firearms (*see* § 27.42(b) of this chapter) outside of legal hunting hours.

7. We prohibit all-terrain vehicles (ATVs or OHRVs) (*see* § 27.31(f) of this chapter).

8. We close the Moody, Little River, Biddeford Pool, and Goosefare Brook divisions of the refuge to all migratory bird hunting.

*B. Upland Game Hunting.* We allow hunting of pheasant and grouse on designated areas of the Brave Boat Harbor, Lower Wells, Upper Wells, Mousam River, Goose Rocks, Goosefare Brook, and Spurwink River division of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A6, and A7 apply.

2. You may take pheasant and grouse by falconry during State seasons.

3. You may only possess approved nontoxic shot (*see* § 32.2(k)) while on the refuge.

4. We close the Moody, Little River, and Biddeford Pool division of the refuge to all upland game hunting.

*C. Big Game Hunting.* * * *

1. Conditions A1, A6, and A7 apply.

* * * * *

3. You must use only portable tree stands and ladders. We prohibit use of nails, screws, or bolts to attach tree stands and ladders to trees (*see* § 32.2(i)). You must remove tree stands and ladders from the refuge following each day (*see* §§ 27.93 and 27.94 of this chapter).

* * * * *

5. We close the Moody and Biddeford Pool divisions of the refuge to white-tailed deer hunting.

6. We only allow archery on those areas of the Little River division open to hunting.

7. You may hunt fox and coyote with archery or shotgun during daylight hours of the State firearm deer season only.

8. Bow hunters with refuge permits may apply for the special ''Wells Hunt''. We must receive letters of interest by November 1 for consideration in a random drawing. Selected hunters must comply with regulations as set by the State.

9. You must report any deer harvested to the refuge office within 48 hours.

*D. Sport Fishing.* We allow sport fishing along the shoreline on the following designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. At the Brave Boat Harbor division on the north side (York) of the stream crossing under Route 103, beginning at Route 103 then downstream to the first railroad trestle.

2. At the Moody division on the north side of the Ogunquit River and downstream of Route 1, beginning at the refuge boundary then downstream a distance of 500 feet (150 m).

3. At the Moody division on the east side of Stevens Brook and downstream of Bourne Avenue, beginning at Bourne Avenue then downstream to where the refuge ends near Ocean Avenue.

4. At the Lower Wells division on the west side of the Webhannet River downstream of Mile Road, from Mile Road north to the first creek.

5. At the Upper Wells division on the south side of the Merriland River downstream of Skinner Mill Road, beginning at the refuge boundary and then east along the oxbow to the woods.

6. At the Mousam River division on the north side of the Mousam River downstream of Route 9, beginning at the refuge boundary and then east to a point opposite Great Hill Road. Access is from the Bridle Path along the first tidal creek.

7. At the Goosefare Brook division on the south side of Goosefare Brook where it flows into the Atlantic Ocean.

8. At the Spurwink River division on the west side (Scarborough) of the Spurwink River upstream of Route 77, beginning at Route 77 and then upstream approximately 1,000 feet (300 m) to a point near the fork in the river.

9. You may launch boats from car top from legal sunrise to legal sunset at Brave Boat Harbor division on Chauncey Creek at the intersection of Cutts Island Road and Sea Point Road.

10. We allow car-top launching from legal sunrise to legal sunset at Spurwink River division on the upstream side of Route 77 at the old road crossing.

11. We allow fishing from legal sunrise to legal sunset.

12. We prohibit lead jigs and sinkers.

13. Anglers must attend their lines at all times.

14. We prohibit collection of bait on the refuge.

**Sunkhaze Meadows National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on designated areas of the refuge in accordance with State regulations.

*B. Upland Game Hunting.* We allow hunting of upland game on designated areas of the refuge in accordance with State regulations subject to the following condition: You may possess only approved nontoxic shot while in the field (*see* § 32.2(k)).

*C. Big Game Hunting.* We allow hunting of deer, moose, and bear on designated areas of the refuge in accordance with State regulations subject to the following condition: You must wear, in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 $cm^2$) of solid-colored hunter-orange clothing or material during firearms big game season.

*D. Sport Fishing.* We allow sport fishing on the waters of and from the banks of Baker Brook, Birch Stream, Buzzy Brook, Dudley Brook, Johnson Brook, Little Birch Stream, Little Buzzy Brook, Sandy Stream, and Sunkhaze Stream.

17. Amend § 32.39 Maryland by revising Patuxent Research Refuge to read as follows:

**§ 32.39 Maryland.**

* * * * *

**Patuxent Research Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, and dove on the North Tract in accordance with State regulations subject to the following conditions:

1. We require a fee-hunting permit.
2. We require hunters age 17 and under to have a parent or guardian countersign to receive a hunting permit. An adult, age 21 or older, possessing a hunting permit, must accompany hunters age 16 and younger in the field.
3. You must check-in and out at the Hunter Control Station (HCS) and exchange your hunting permit for a daily hunting pass and a vehicle pass every time you enter or exit the refuge, including breaks, lunch, and dinner.
4. We restrict hunters to the selected area and activity until you check out at the HCS.
5. You must use established and maintained roads and not block traffic (*see* § 27.31(h) of this chapter).
6. We prohibit hunting on or across any road, within 50 yards (45 m) of a road, within 150 yards (135 m) of any occupied structure, or within 25 yards (22.5 m) from any designated ''No Hunting'' area. Only those with a State ''Hunt from a Vehicle Permit'' may hunt from the roadside at designated areas.
7. You must wear at least a fluorescent-orange hat or cap when walking from your vehicle to your hunting site. ''Jump Shooters'' must wear at least a fluorescent-orange hat or cap while hunting. If you stop and stand, you may replace the orange hat or cap with a camouflage one.
8. You may only carry one shotgun, 20 gauge or larger, in the field. We prohibit additional firearms.
9. We only allow the taking of Canada goose during the special September and late season for a resident Canada goose.
10. We prohibit hunting of goose, duck, or dove during the deer firearm seasons and the early deer muzzleloader seasons that occur in October.
11. We prohibit dove hunting during any deer muzzleloader or firearms seasons.
12. We require waterfowl hunters to use retrievers on any impounded waters. Retrievers must be of the traditional breeds, such as Chesapeake Bay, golden, Laborador, etc.
13. We require dogs to be under the immediate control of their owner at all times. Law enforcement officers may seize dogs running loose or unattended (*see* § 26.21(b) of this chapter).

*B. Upland Game Hunting.* We allow hunting of turkey, bobwhite quail, grey squirrel, eastern cottontail rabbit, and woodchuck on the North Tract and turkey on the Central Tract in accordance with State regulations subject to the following conditions:
1. Conditions A1 and A6 apply.
2. You must wear a minimum of 400 square inches (2,600 cm2) of fluorescent orange on your head, chest, and back while hunting upland game except for turkey hunting. We encourage turkey hunters to wear fluorescent orange.
3. We prohibit hunting of upland game during the firearms and muzzleloader seasons.
4. We select turkey hunters by a computerized lottery for youth, disabled, mobility impaired, and general public hunts. We require documentation for disabled and mobility-impaired hunters.
5. We require each turkey hunter to attend a turkey clinic sponsored by the National Wild Turkey Federation.
6. We require turkey hunters to pattern their weapons prior to hunting.

*C. Big Game Hunting.* We allow hunting of white-tailed deer in accordance with State regulations subject to the following conditions:
1. We require you to pass a proficiency test with each weapon that you desire to use prior to issuing you a hunting permit.
2. Conditions A1 through A6 apply.
3. You must wear a minimum of 400 square inches (2,600 cm2) of fluorescent orange on your head, chest, and back while hunting. Bow hunters must follow this requirement when moving to and from the deer stand and while tracking. We do not require bow hunters to wear the fluorescent orange when positioning to hunt except during the deer muzzleloader season.
4. We will extract a jaw from each deer harvested before leaving the refuge.
5. We publish the Refuge Hunting Regulations, which include the daily and yearly bag limits and hunting dates for the North, Central, and South Tracts, in July. We give hunters a copy of the regulations with your fee permit, and they must know the specific hunt seasons and regulations.
6. You must use portable tree stands equipped with a safety belt. You must wear the safety belt while in the tree stand. The stand must be at least 10 feet (3 m) off the ground. You must remove tree stands daily from the refuge (*see* § 27.93 of this chapter). Hunters must use deer stands to hunt the South and Central Tracts. (We will make limited accommodations for disabled hunters for Central Tract lottery hunts.)
7. We prohibit the firing of weapons after legal shooting hours, including the unloading of muzzleloaders.
8. We prohibit use of dogs to hunt or track wounded deer.
9. If you wish to track wounded deer beyond 1½ hours after legal sunset, you must report in person to the HCS. If you are hunting on the refuge's South or Central Tracts, you must call the HCS. The HCS manager will call a refuge law enforcement officer to gain consent to track. We prohibit tracking later than 2½ hours after legal sunset. We may revoke your hunting privileges if you wound a deer and do not make a reasonable effort to retrieve it. This may include next-day tracking.
10. North Tract: We allow shotgun, muzzleloader, and bow hunting in accordance with the following conditions:
i. Conditions C1 through C9 apply.
11. Central Tract: We allow shotgun and bow hunting in accordance with the following conditions:
i. Conditions C1 through C9 apply.
ii. We only allow bow hunters to hunt on the Schafer Farm.
iii. We select Central Tract shotgun and bow hunters by a computerized lottery. You will be assigned a specific hunting location.
iv. You must carry a flashlight, whistle, and a compass while hunting.
12. South Tract: We allow shotgun, muzzleloader, and bow hunting in accordance with the following regulations:
i. Conditions C1 through C9 and C11iv apply.
ii. You must access South Tract hunting areas A, B, and C off Springfield Road through the Old Beltsville Airport, and South Tract hunting area D off Maryland Route 197 through Gate #4 and park in designated parking areas.
iii. We prohibit shooting into any open meadow or field area.
iv. We prohibit parking along the National Wildlife Visitor Center road or in the visitor center parking lot.

*D. Sport Fishing.* We allow sport fishing in accordance with State regulations subject to the following conditions:
1. We require a free refuge fishing permit, which you must carry with you at all times while fishing. Organized groups may request a group permit. The group leader must carry a copy of the permit and stay with the group at all times while fishing.
2. You may take one additional licensed adult or two youths age 15 or under to fish under your permit and in your presence.
3. You may only use earthworms for live bait.
4. We prohibit harvesting bait on the refuge.
5. You must attend all fishing lines.
6. We prohibit fishing from all bridges except the south side of Bailey Bridge.
7. You may take the following species: chain pickerel, catfish, golden shiner, eel, and sunfish (includes bluegill, black crappie, warmouth, and pumpkinseed).
8. You must catch and release all bass.
9. North Tract: We allow sport fishing in accordance with the following conditions:

i. We allow sport fishing at Lake Allen, Rieve's Pond, New Marsh, Cattail Pond, Bailey Bridge Pond, Bailey Bridge (south side), and Little Patuxent River (downstream only from Bailey's Bridge).

ii. Conditions D1 through D8 apply.

iii. We require a free North Tract refuge access permit that you must possess and carry at all times. If you are age 17 or under, you must have a parent or guardian countersign to receive an access permit. A parent or legal guardian must accompany those anglers age 17 and under.

iv. You may fish year-round at Lake Allen, New Marsh, Cattail Pond, Bailey Bridge Pond, Bailey Bridge (south side), and the Little Patuxent River (downstream only from Bailey Bridge) except during the white-tailed deer muzzleloader and shotgun seasons and the waterfowl hunting season. We also reserve the right to close Lake Allen at any time.

v. You may fish at Rieve's Pond from February 1 to August 31 and on Sundays from September 1 to January 31.

vi. We allow wading, for fishing purposes only, downstream from Bailey Bridge on the Little Patuxent River. We prohibit wading in other bodies of water.

vii. We prohibit the use of any type of watercraft.

10. South Tract: We allow sport fishing in accordance with the following conditions:

i. Conditions D1 through D8 apply.

ii. You must park your vehicle in the parking lot located behind Refuge Gate #8 off Maryland Route 197.

iii. You must display your fishing permit on your vehicle dashboard.

iv. We allow sport fishing at the pier and designated shorelines at Cash Lake. See Refuge Fishing Regulations for areas opened to fishing. We post other areas with ''No fishing beyond this point''.

v. You may fish from mid-June until mid-October.

vi. You may fish between the hours of 6 a.m. until legal sunset. We open refuge trails from legal sunrise until 5:30 p.m. daily.

vii. We prohibit boat trailers.

viii. You may use watercraft for fishing in accordance with the State boating laws subject to the following conditions: You may use car-top boats 14 feet (4.2 m) or less, canoes, kayaks, and inflatable boats. You may only use electric motors, 4 hp or less. We prohibit sailboats.

18. Amend § 32.40 Massachusetts by:

a. Adding Assabet River National Wildlife Refuge;

b. Adding Great Meadows National Wildlife Refuge; and

c. Revising Oxbow National Wildlife Refuge to read as follows:

**§ 32.40 Massachusetts.**

* * * * *

**Assabet River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of woodcock on designated portions of the refuge in accordance with State regulations subject to the following conditions:

1. We allow woodcock hunting within the portions of the refuge located north of Hudson Road, except those areas north of Hudson Road that are designated as ''archery only'' hunting on the current refuge hunting map. These archery only hunting areas north of Hudson Road are those portions of the refuge that are external to Patrol Road from its southerly intersection with White Pond Road, northwesterly and then easterly, to its intersection with Old Marlborough Road.

2. We require refuge permits.

3. You must possess and carry all applicable hunting licenses, permits, stamps, and a photographic identification while hunting on the refuge.

4. We prohibit use of motorized vehicles on the refuge.

5. During any season when it is legal to hunt deer with a shotgun or muzzleloader, we require all hunters to wear a minimum of 500 square inches (3,250 $cm^2$) of solid-orange clothing or material in a conspicuous manner on their chest, back, and head. During all other times, if you are engaged in woodcock hunting on the refuge, you must wear a minimum of a solid-orange hat.

6. We prohibit the use of electronic calls during any hunting season.

7. We prohibit trimming or cutting of branches larger than the diameter of a quarter (see § 27.61 of this chapter).

8. We prohibit the marking any tree or other refuge feature with flagging, paint, reflective material, or any other substance (*see* § 27.61 of this chapter).

9. You may scout hunting areas on the refuge once you have obtained a refuge permit. Scouting may begin no earlier than 1 month from the opening day of the hunting season. We prohibit the use of dogs during scouting.

10. We allow hunters to enter the refuge 1½ hours before legal hunting hours, and they must leave the refuge no later than 1½ hours after legal sunset.

11. For seasons wherein State regulations allow use of dogs, we allow no more than two dogs per hunting party. We prohibit the training of dogs on the refuge.

*B. Upland Game Hunting.* We allow upland game hunting on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow shotgun hunting for ruffed grouse, cottontail rabbit, and gray squirrel within those portions of the refuge located north of Hudson Road, except those areas north of Hudson Road designated as ''archery only'' hunting on the current refuge hunting map. These archery only hunting areas north of Hudson Road are those portions of the refuge that are external to Patrol Road from its southerly intersection with White Pond Road, northwesterly and then easterly, to its intersection with Old Marlborough Road.

2. Conditions A2, A3, A4, A6, A7, A8, A9, A10, and A11 apply.

3. You may possess only approved nontoxic shot while in the field (*see* § 32.2(k)).

4. We prohibit construction or use of any permanent structure while hunting on the refuge. You must remove all temporary blinds each day (*see* §§ 27.93 and 27.94 of this chapter).

5. During seasons when it is legal to hunt deer with a shotgun or muzzleloader, we require all hunters, including archers and small game hunters, to wear a minimum of 500 square inches (3,250 $cm^2$) of solid-orange clothing or material in a conspicuous manner on their chest, back, and head. During all other times, if you are engaged in ruffed grouse, squirrel, or cottontail rabbit hunting on the refuge, you must wear a minimum of a solid-orange hat.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow shotgun and muzzleloader hunting of white-tailed deer, as well as shotgun hunting of turkey, within the portions of the refuge located north of Hudson Road, except those areas north of Hudson Road that are designated as ''archery only'' hunting on the current refuge hunting map. These archery only hunting areas north of Hudson Road are those portions of the refuge that are external to Patrol Road from its southerly intersection with White Pond Road, northwesterly and then easterly, to its intersection with Old Marlborough Road.

2. We allow archery deer and archery turkey hunting within all portions of the refuge during the hunting seasons for these species.

3. We require refuge permits. We limit the numbers of deer and turkey hunters allowed to hunt on the refuge. If the number of applications received to hunt these species is greater than the number

of permits available, we will issue permits by random selection.

4. Conditions A3, A4, A6, A7, A8, A9, and A10 apply.

5. During seasons when it is legal to hunt deer with a shotgun or muzzleloader, we require all hunters, including archers and small game hunters, to wear a minimum of 500 square inches (3,250 $cm^2$) of solid-orange clothing or material in a conspicuous manner on their chest, back, and head.

6. You may use decoys to hunt turkey.

7. We prohibit driving deer by any means on the refuge.

8. We prohibit construction or use of permanent structures while hunting. We prohibit driving a nail, spike, screw, or other metal object into any tree or hunting from any tree into which a nail, spike, screw, or other object has been driven (*see* § 32.2(i)).

9. You may use temporary tree stands while engaged in hunting deer during the applicable archery, shotgun, or muzzleloader deer seasons. You must remove all stands or any blinds by legal sunset each day (*see* §§ 27.93 and 27.94 of this chapter). We require all tree stands to have the name and address of the owner clearly printed on the stand.

10. We prohibit possession of buckshot while hunting during any season on the refuge.

*D. Sport Fishing.* We allow sport fishing in Puffer Pond in accordance with State regulations subject to the following conditions:

1. We allow fishing from nonmotorized canoes and car-top boats, as well as from designated locations on the banks of Puffer Pond. We prohibit the use of trailers to launch or retrieve canoes or boats on the refuge.

2. We allow catch and release fishing only.

3. We prohibit the use of live bait.

4. We prohibit lead sinkers.

5. We prohibit taking of frogs or turtles on the refuge (*see* § 27.21 of this chapter).

6. You may fish on Puffer Pond from ½ hour before legal sunrise to ½ hour after legal sunset.

7. We prohibit night fishing or ice fishing on the refuge.

8. We prohibit open fires anywhere on the refuge.

**Great Meadows National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require refuge permits. We limit the numbers of waterfowl hunters allowed to hunt on the refuge. If the number of applications received to hunt waterfowl is greater than the number of permits available, we will issue permits by random selection.

2. We will provide waterfowl hunters maps showing the portions of the refuge designated as open.

3. You must possess and carry all applicable hunting licenses, permits, stamps, and a photographic identification while hunting on the refuge.

4. We prohibit construction or use of any permanent structure while hunting on the refuge. You must remove all temporary blinds by legal sunset each day (*see* §§ 27.93 and 27.94 of this chapter).

5. We prohibit use of motorized vehicles on the refuge.

6. Except while hunting waterfowl from a blind or from a boat, you must wear a minimum of 500 square inches (3,250 $cm^2$) of solid-orange clothing or material in a conspicuous manner on your chest, back, and head during any season when it is legal to hunt deer with a shotgun or muzzleloader.

7. We prohibit the use of electronic calls during any hunting season.

8. We prohibit trimming or cutting of branches larger than the diameter of a quarter (*see* § 27.61 of this chapter).

9. We prohibit the marking of any tree or other refuge feature with flagging, paint, reflective material or any other substance (*see* § 27.61 of this chapter).

10. You may scout hunting areas on the refuge once you have obtained a refuge permit. Scouting may begin no earlier than 1 month from the opening day of the hunting season. We prohibit the use of dogs during scouting.

11. We allow hunters to enter the refuge 1½ hours before legal hunting hours, and they must leave the refuge no later than 1½ hours after legal sunset.

12. We allow no more than two dogs per hunting party. We prohibit the training of dogs on the refuge.

*B. Upland Game Hunting.* [Reserved.]

*C. Big Game Hunting.* We allow archery hunting of whitetail deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow archery hunting of whitetail deer within the portions of the Concord Unit of the refuge that are located north of Massachusetts Route 225. We also allow archery hunting of whitetail deer within the portions of the Sudbury Unit of the refuge that are located north of Stonebridge Road in Wayland, Massachusetts and south of Lincoln Road/Sherman's Bridge Road on the Sudbury and Wayland Town Line.

2. We prohibit the use of firearms for hunting deer on the refuge. However, you may archery hunt in the portions of the refuge that are open for deer hunting during the archery, shotgun, and muzzleloader seasons established by the State.

3. We require refuge permits. We limit the numbers of deer hunters allowed to hunt on the refuge. If the number of applications received to hunt deer on the refuge is greater than the number of permits available, we will issue permits by random selection.

4. Conditions A3, A5, A7, A8, A9, A11, and A12 apply.

5. During seasons when it is legal to hunt deer with a shotgun or muzzleloader, we require all hunters, including archers and small game hunters, to wear a minimum of 500 square inches (3,250 $cm^2$) of solid-orange clothing or material in a conspicuous manner on their chest, back, and head.

6. We prohibit the use of decoys to hunt deer on the refuge.

7. We prohibit driving deer by any means on the refuge.

8. We prohibit construction or use of permanent structures while hunting. We prohibit driving nails, spikes, screws, or other metal object into any tree or hunting from any tree in which a nail, spike, screw, or other object has been driven (*see* § 32.2(i)).

9. You may use temporary tree stands while engaged in hunting deer. You must remove all stands or any blinds by legal sunset (*see* §§ 27.93 and 27.94 of this chapter). We require all tree stands to have the name and address of the owner clearly printed on the stand.

*D. Sport Fishing.* We allow sport fishing in designated areas of the refuge in accordance with State regulations subject to the following condition: We allow fishing along the main channels of the Concord and Sudbury Rivers and from designated banks of Heard Pond. We limit access to Heard Pond to foot traffic only.

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**Oxbow National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of waterfowl, woodcock, and common snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow waterfowl and common snipe hunting within the portions of the refuge located south of Massachusetts Route 2 and west of the B&M railroad tracks.

2. We allow woodcock hunting within the portions of the refuge south of Massachusetts Route 2 and west of the

B&M railroad tracks; north of Massachusetts Route 2 and south of Hospital Road; as well as within the portions of the refuge along the westerly side of the Nashua River located north of the commuter rail tracks in Shirley, Massachusetts.

3. We require refuge permits. We limit the numbers of waterfowl hunters allowed to hunt on the refuge. If the number of applications received to hunt waterfowl is greater than the number of permits available, we will issue permits by random selection.

4. You must possess and carry all applicable hunting licenses, permits, stamps, and a photographic identification while hunting on the refuge.

5. We prohibit construction or use of any permanent structure while hunting on the refuge. You must remove all temporary blinds each day (*see* §§ 27.93 and 27.94 of this chapter).

6. We prohibit use of motorized vehicles on the refuge.

7. With the exception of waterfowl hunters hunting within a blind or from a boat, during any season when it is legal to hunt deer with a shotgun or muzzleloader, we require all hunters to wear a minimum of 500 square inches (3,250 $cm^2$) of solid-orange clothing or material in a conspicuous manner on their chest, back, and head. During all other times, if you are engaged in woodcock hunting on the refuge, you must wear a minimum of a solid-orange hat.

8. We prohibit the use of electronic calls during any hunting season.

9. We prohibit trimming or cutting of branches larger than the diameter of a quarter (*see* § 27.51 of this chapter).

10. We prohibit the marking of any tree or other refuge feature with flagging, paint, reflective material, or any other substance (*see* § 27.51 of this chapter).

11. You may scout hunting areas on the refuge once you have obtained a refuge permit. Scouting may begin no earlier than 1 month from the opening day of the hunting season. We prohibit the use of dogs during scouting.

12. We allow hunters to enter the refuge 1½ hours before legal hunting hours, and they must leave the refuge no later than 1½ hours after legal sunset.

13. For seasons wherein State regulations allow use of dogs, we allow no more than two dogs per hunting party. We prohibit the training of dogs on the refuge.

*B. Upland Game Hunting.* We allow upland game hunting on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow shotgun hunting of ruffed grouse, cottontail rabbit, and gray squirrels within the areas of the refuge located south of Massachusetts Route 2 and west of the B&M railroad tracks; north of Massachusetts Route 2 and south of Hospital Road; and, within the portions of the refuge along the westerly side of the Nashua River located north of the commuter rail tracks in Shirley, Massachusetts, subject to the following conditions:

2. We require refuge permits.

3. You may possess only approved nontoxic shot while in the field (*see* § 32.2(k)).

4. Conditions A4, A5, A6, A8, A9, A10, A11, A12, and A13 apply.

5. With the exception of waterfowl hunters hunting within a blind or from a boat, during seasons when it is legal to hunt deer with a shotgun or muzzleloader, we require all hunters, including archers and small game hunters, to wear a minimum of 500 square inches (3,250 $cm^2$) of solid-orange clothing or material in a conspicuous manner on their chest, back, and head. During all other times, if you are engaged in ruffed grouse, squirrel, or cottontail rabbit hunting on the refuge, you must wear a minimum of a solid-orange hat.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow shotgun, archery, and muzzleloader hunting of white-tailed deer, as well as shotgun and archery hunting of turkey, within the portions of the refuge located south of Massachusetts Route 2 and west of the B&M railroad tracks.

2. We allow archery deer and archery turkey hunting within the portions of the refuge located south of Massachusetts Route 2 and east of the B&M railroad tracks, as well as within the portions of the refuge along the easterly side of the Nashua River located north of the commuter rail tracks in Ayer, Massachusetts.

3. We allow archery deer hunting as well as shotgun and archery turkey hunting within the portions of the refuge located north of Massachusetts Route 2 and south of Hospital Road; and, within the portions of the refuge along the westerly side of the Nashua River located north of the commuter rail tracks in Shirley, MA.

4. We require refuge permits. We limit the numbers of deer and turkey hunters allowed to hunt on the refuge. If the number of applications received to hunt these species is greater than the number of permits available, we will issue permits by random selection.

5. Conditions A4, A6, A8, A9, A10, A11, and A12 apply.

6. With the exception of waterfowl hunters hunting within a blind or from a boat, during seasons when it is legal to hunt deer with a shotgun or muzzleloader, we require all hunters, including archers and small game hunters, to wear a minimum of 500 square inches (3,250 $cm^2$) of solid-orange clothing or material in a conspicuous manner on their chest, back, and head.

7. Hunters may only use decoys to hunt turkey.

8. We prohibit driving deer by any means on the refuge.

9. We prohibit construction or use of permanent structures while hunting. You may not drive nails, spikes, screws or other metal object into any tree or hunt from any tree in which a nail, spike, screw or other object has been driven (*see* § 32.2(i)).

10. You may use temporary tree stands while engaged in hunting deer during the applicable archery, shotgun, or muzzleloader deer seasons. You must remove all stands or any blinds by legal sunset (*see* §§ 27.93 and 27.94 of this chapter). We require all tree stands to have the name and address of the owner clearly printed on the stand.

11. We prohibit possession of buckshot while hunting during any season on the refuge.

*D. Sport Fishing.* We allow sport fishing along the banks of the Nashua River in accordance with State regulations.

* * * * *

19. Amend § 32.42 Minnesota by:

a. Revising paragraph C. of Agassiz National Wildlife Refuge;

b. Revising the introductory text of paragraph B., adding paragraphs B.4. and B.5. and revising paragraph C. of Big Stone National Wildlife Refuge;

c. Adding Big Stone Wetland Management District;

d. Revising Detroit Lakes Wetland Management District;

e. Revising paragraph A.3., adding paragraphs A.4. through A.6., revising paragraph B., adding paragraph C.3., and revising paragraph D.1. of Fergus Falls Wetland Management District;

f. Adding Glacial Ridge National Wildlife Refuge;

g. Adding paragraph A.5., revising paragraph B., and adding paragraphs C.3. and D.3. of Litchfield Wetland Management District;

h. Revising paragraph A., and adding paragraphs B.4. and C.7. of Minnesota Valley National Wildlife Refuge;

i. Adding Minnesota Valley Wetland Management District;

j. Revising paragraph A.3., adding paragraph A.4., revising paragraph B., adding paragraph C.3., and revising paragraph D.1. of Morris Wetland Management District;

k. Adding paragraphs A.4. and A.5., revising paragraph B.2., and adding paragraphs B.4., C.4. and D. of Northern Tallgrass Prairie National Wildlife Refuge;

l. Adding paragraphs A.2. through A.4., B.3., C.5., and D.4. of Rice Lake National Wildlife Refuge;

m. Adding paragraph C.5. and revising paragraph D. of Rydell National Wildlife Refuge;

n. Revising the introductory text of paragraphs A., B., and C., revising paragraph A.4., and adding paragraphs A.6., A.7., B.3., C.5., and C.6. of Sherburne National Wildlife Refuge;

o. Revising the introductory text of paragraphs A., B., and C., revising paragraph A.2., and adding paragraphs A.3., A.4., B.5., C.4., D.5., and D.6. of Tamarac National Wildlife Refuge; and

p. Revising paragraphs A., C., and D. of Windom Wetland Management District to read as follows:

**§ 32.42 Minnesota.**

* * * * *

**Agassiz National Wildlife Refuge**

* * * * *

*C. Big Game Hunting.* We allow hunting of white-tailed deer and moose on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters may use portable stands. Hunters may not construct or use permanent blinds, permanent platforms, or permanent ladders.

2. You must remove all stands and personal property from the refuge by legal sunset each day (*see* §§ 27.93 and 27.94 of this chapter).

3. We prohibit hunters occupying ground and tree stands that are illegally set up or constructed.

4. We prohibit the use of snowmobiles and ATVs.

5. We allow the use of wheeled, nonmotorized conveyance devices (*i.e.*, bikes, retrieval carts) except in the Wilderness Area.

6. We allow the use of nonmotorized boats and canoes.

7. We prohibit entry into the ''Closed Areas''.

8. We prohibit camping.

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**Big Stone National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* We allow hunting of partridge, pheasant, wild turkey, gray and fox squirrel, cottontail and jack rabbit, red and gray fox, raccoon, and striped skunk on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

4. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (*see* § 26.21(b) of this chapter).

5. We prohibit camping.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters may use portable stands. Hunters may not construct or use permanent blinds, permanent platforms, or permanent ladders.

2. You must remove all stands and personal property from the refuge by legal sunset each day (*see* §§ 27.93 and 27.94 of this chapter).

3. We prohibit hunters occupying ground and tree stands that are illegally set up or constructed.

4. We prohibit camping.

* * * * *

**Big Stone Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds throughout the district in accordance with State regulations subject to the following conditions:

1. We prohibit the use of motorized boats.

2. We prohibit the construction or use of permanent blinds, stands, or scaffolds.

3. You must remove all personal property, which includes boats, decoys, and blinds brought onto the WPA each day (*see* §§ 27.93 and 27.94 of this chapter).

4. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (*see* § 26.21(b) of this chapter).

5. We prohibit camping.

*B. Upland Game Hunting.* We allow upland game hunting throughout the district in accordance with State regulations subject to the following conditions: Conditions A4 and A5 apply.

*C. Big Game Hunting.* We allow big game hunting throughout the district in accordance with State regulations subject to the following conditions:

1. Hunters may use portable stands. Hunters may not construct or use permanent blinds, permanent platforms, or permanent ladders.

2. You must remove all stands and personal property from the WPAs each day (*see* §§ 27.93 and 27.94 of this chapter).

3. We prohibit hunters occupying ground and tree stands that are illegally set up or constructed.

4. Condition A5 applies.

*D. Sport Fishing.* We allow fishing throughout the district in accordance with State regulations subject to the following conditions:

1. We prohibit the use of motorized boats.

2. You must remove all ice fishing shelters and all other personal property from the WPAs each day (*see* § 27.93 of this chapter).

3. Condition A5 applies.

**Detroit Lakes Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds throughout the district in accordance with State regulations, except that we prohibit hunting on the Headquarters Waterfowl Production Area (WPA) in Becker County, the Hitterdal WPA in Clay County, and the McIntosh WPA in Polk County. The following conditions apply:

1. We prohibit the use of motorized boats.

2. We prohibit the construction or use of permanent blinds, stands, or scaffolds (*see* §§ 27.93 and 27.94 of this chapter).

3. You must remove all personal property, which includes boats, decoys, and blinds brought onto the WPAs each day (*see* §§ 27.93 and 27.94 of this chapter).

4. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season.

5. We prohibit camping.

*B. Upland Game Hunting.* We allow upland game hunting in accordance with State regulations throughout the district (except that we allow no hunting on the Headquarters Waterfowl Production Area (WPA) in Becker County, the Hitterdal WPA in Clay County, and the McIntosh WPA in Polk County) subject to the following conditions: Conditions A4 and A5 apply.

*C. Big Game Hunting.* We allow big game hunting in accordance with State regulations throughout the district, except that we prohibit hunting on the Headquarters Waterfowl Production Area (WPA) in Becker County, the Hitterdal WPA in Clay County, and the McIntosh WPA in Polk County. The following conditions apply:

1. Hunters may use portable stands. Hunters may not construct or use

permanent blinds, permanent platforms, or permanent ladders.

2. You must remove all stands and personal property from the WPAs each day (*see* §§ 27.93 and 27.94 of this chapter).

3. We prohibit hunters occupying ground and tree stands that are illegally set up or constructed.

4. Condition A5 applies.

*D. Sport Fishing.* We allow fishing in accordance with State regulations throughout the district subject to the following conditions:

1. You must remove all ice fishing shelters and all other personal property from the WPAs each day (*see* § 27.93 of this chapter).

2. Condition A5 applies.

**Fergus Falls Wetland Management District**

*A. Migratory Game Bird Hunting.*
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* * * * *

3. During the State-approved hunting season, we allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times (*see* § 26.21(b) of this chapter).

4. We prohibit the construction or use of permanent blinds, stands, or scaffolds (*see* §§ 27.93 and 27.94 of this chapter).

5. We prohibit hunters occupying ground and tree stands that are illegally set up or constructed.

6. We prohibit camping.

*B. Upland Game Hunting.* We allow upland game hunting throughout the district (except that we prohibit hunting on the Townsend, Headquarters, Mavis, and Gilmore WPAs in Otter Tail County, and Larson WPA in Douglas County) in accordance with State regulations subject to the following conditions: Conditions A3 and A6 apply.

*C. Big Game Hunting.* * * *
* * * * *

3. Condition A6 applies.

*D. Sport Fishing.* * * *

1. Conditions A1 and A6 apply.

**Glacial Ridge National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, woodcock, snipe, rail, and mourning dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit all types of watercraft.

2. We restrict vehicles to designated parking lots (*see* § 27.31 of this chapter).

*B. Upland Game Hunting.* We allow hunting of prairie chicken and sharp-tailed grouse on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Only those hunters selected by the Minnesota Department of Natural Resources to hunt prairie chicken may hunt sharp-tailed grouse.

2. Condition A2 applies.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must remove all stands from the refuge at the end of each day's hunt.

3. Condition A2 applies.

*D. Sport Fishing.* [Reserved]

**Litchfield Wetland Management District**

*A. Migratory Game Bird Hunting.*
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* * * * *

5. We prohibit camping.

*B. Upland Game Hunting.* We allow upland game hunting throughout the district (except we prohibit hunting on the Phare Lake Waterfowl Production Area in Renville County) in accordance with State regulations subject to the following conditions: Conditions A4 and A5 apply.

*C. Big Game Hunting.* * * *
* * * * *

3. Condition A5 applies.

*D. Sport Fishing.* * * *
* * * * *

3. Condition A5 applies.

**Minnesota Valley National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require permit for special hunts.

2. We prohibit the use of motorized boats.

3. We prohibit the construction or use of permanent blinds, stands, or scaffolds.

4. You must remove all personal property, which includes boats, decoys, and blinds brought onto the refuge each day (*see* §§ 27.93 and 27.94 of this chapter).

5. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season.

6. We prohibit entry to hunting areas earlier than 2 hours before legal shooting hours.

7. We prohibit camping.

*B. Upland Game Hunting.* * * *
* * * * *

4. Conditions A5 and A7 apply.

*C. Big Game Hunting.* * * *
* * * * *

7. Conditions A6 and A7 apply.

* * * * *

**Minnesota Valley Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds throughout the district in accordance with State regulations subject to the following conditions:

1. We prohibit the use of motorized boats.

2. We prohibit the construct or use of permanent blinds, stands, or scaffolds.

3. You must remove all personal property, which includes boats, decoys, and blinds brought onto the WPAs each day (*see* §§ 27.93 and 27.94 of this chapter).

4. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (*see* § 26.21(b) of this chapter).

5. We prohibit camping.

*B. Upland Game Hunting.* We allow upland game hunting throughout the district in accordance with State regulations subject to the following conditions: Conditions A4 and A5 apply.

*C. Big Game Hunting.* We allow big game hunting throughout the district in accordance with State regulations subject to the following conditions:

1. Hunters may use portable stands. Hunters may not construct or use permanent blinds, permanent platforms, or permanent ladders.

2. Hunters may not possess single shot projectiles (shotgun slugs or bullets) on the Soberg Waterfowl Production Area.

3. You must remove all stands and personal property from the WPAs at the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

4. We prohibit hunters occupying ground and tree stands that are illegally set up or constructed.

5. Condition A5 applies.

*D. Sport Fishing.* We allow sport fishing throughout the district in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A5 apply.

2. You must remove all ice fishing shelters and all other personal property from the WPAs each day (*see* §§ 27.93 and 27.94 of this chapter).

**Morris Wetland Management District**

*A. Migratory Game Bird Hunting.** * *
* * * * *

3. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all

times during the State-approved hunting season (*see* § 26.21(b) of this chapter).

4. We prohibit camping.

*B. Upland Game Hunting.* We allow hunting of upland game, except that we prohibit hunting on the designated portions of the Edward-Long Lake Waterfowl Production Area in Stevens County, in accordance with State regulations subject to the following conditions: Conditions A3 and A4 apply.

*C. Big Game Hunting.* * * *

* * * * *

3. Condition A4 applies.

*D. Sport Fishing.* * * *

1. Conditions A1 and A4 apply.

* * * * *

**Northern Tallgrass Prairie National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

* * * * *

4. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (*see* § 26.21(b) of this chapter).

5. We prohibit camping.

*B. Upland Game Hunting.* * * *

* * * * *

2. We prohibit the use of dogs for hunting furbearers. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (*see* § 26.21(b) of this chapter).

* * * * *

4. Condition A5 applies.

*C. Big Game Hunting.* * * *

* * * * *

4. Condition A5 applies.

*D. Sport Fishing.* [Reserved]

**Rice Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

* * * * *

2. We require that the visible portion of at least one article of clothing worn above the waist be blaze orange.

3. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (*see* § 26.21(b) of this chapter).

4. We prohibit camping.

*B. Upland Game Hunting.* * * *

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3. Conditions A3 and A4 apply.

*C. Big Game Hunting.* * * *

* * * * *

5. Condition A4 applies.

*D. Sport Fishing.* * * *

* * * * *

4. Condition A4 applies.

**Rydell National Wildlife Refuge**

* * * * *

*C. Big Game Hunting.* * * *

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5. We prohibit camping.

*D. Sport Fishing.* We allow sport fishing on Tamarac Lake in accordance with State regulations subject to the following conditions:

1. We only allow fishing from designated fishing piers.

2. We allow fishing from May 1 to November 1.

3. We allow parking at designated parking lots only (*see* § 27.31 of this chapter).

4. Condition C5 applies.

**Sherburne National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, rail, woodcock, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

4. We prohibit entry to hunting areas earlier than 2 hours before legal shooting ours.

* * * * *

6. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times, during the State-approved hunting season (*see* § 26.21(b) of this chapter).

7. We prohibit camping.

*B. Upland Game Hunting.* We allow hunting of ruffed grouse, ring-necked pheasant, gray and fox squirrel, snowshoe hare, cottontail rabbit, and jackrabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

3. Conditions A6 and A7 apply.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulation subject to the following conditions:

* * * * *

5. We prohibit deer pushes or deer drives in the areas closed to deer hunting.

6. Conditions A4 and A7 apply.

* * * * *

**Tamarac National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow the hunting of goose, duck, coot, woodcock, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

2. You must remove all personal property, which includes boats, decoys, and blinds brought onto the refuge each day (*see* §§ 27.93 and 27.94 of this chapter).

3. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times, during the State-approved hunting season (*see* § 26.21(b) of this chapter).

4. We prohibit camping.

*B. Upland Game Hunting.* We allow hunting of ruffed grouse, red, gray, and fox squirrel, cottontail rabbit, jackrabbit, snowshoe hare, red fox, raccoon, and striped skunk on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

5. Conditions A3 and A4 apply.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

4. Condition A4 applies.

*D. Sport Fishing.* * * *

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5. You must remove all ice fishing shelters and all other personal property from the refuge each day (*see* §§ 27.93 and 27.94 of this chapter).

6. Condition A4 applies.

* * * * *

**Windom Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds throughout the district in accordance with State regulations subject to the following conditions:

1. We prohibit hunting on the Worthington Waterfowl Production Area (WPA) in Nobles County, or designated portions of the Wolf Lake WPA in Cottonwood County.

2. We prohibit the use of motorized boats.

3. You must remove all personal property, which includes boats, decoys, and blinds brought onto the WPAs at the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

4. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (*see* § 26.21(b) of this chapter).

5. We prohibit camping.

* * * * *

*C. Big Game Hunting.* We allow hunting of big game throughout the district in accordance with State regulations subject to the following conditions:

1. We prohibit hunting on the Worthington WPA in Nobles County, Headquarters WPA in Jackson County, and designated portions of the Wolf Lake WPA in Cottonwood County.

2. We allow the use of portable stands. Hunters may not construct or use permanent blinds, permanent platforms, or permanent ladders.

3. You must remove all stands and personal property from the WPAs at the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

4. We prohibit hunters occupying ground and tree stands that are illegally set up or constructed.

*D. Sport Fishing.* We allow fishing throughout the district in accordance with State regulations subject to the following conditions:

1. Conditions A2 and A5 apply.

2. You must remove all ice fishing shelters and other personal property from the WPAs each day (*see* § 27.93 of this chapter).

20. Amend § 32.43 Mississippi by revising paragraph D. of Noxubee National Wildlife Refuge to read as follows:

**§ 32.43 Mississippi.**

* * * * *

**Noxubee National Wildlife Refuge**

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*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The sport fishing, boating, and bow fishing seasons extend from March 1 through October 31, except for the Noxubee River and borrow pit areas along Highway 25 that are open year-round.

2. We prohibit anglers leaving boats overnight on the refuge (*see* § 27.93 of this chapter).

3. Anglers must keep boat travel at idle speed, and they must not create a wake when moving.

4. We prohibit limb lines, snag lines, and hand grappling in Ross Branch, Bluff, and Loakfoma Lakes.

5. Anglers must tag pole and set hooks with their name and address when using them in rivers, creeks, and other water bodies. Anglers must remove these devices when not in use.

6. Trotlining:

i. Anglers must label each end of the trotline floats with the owner's name and address.

ii. We limit trotlines to one line per person, and we allow no more than two trotlines per boat.

iii. Anglers must tend all trotlines every 24 hours and remove them when not in use.

7. Jug fishing:

i. Anglers must label each jug with their name and address.

ii. Anglers must attend all jugs every 24 hours and remove them when not in use.

8. We require a Special Use Permit for night time bow fishing.

* * * * *

21. Amend § 32.44 Missouri by:

a. Revising the introductory text of paragraph C., revising paragraph C.5. and adding paragraph C.6. of Big Muddy National Fish and Wildlife Refuge;

b. Adding paragraph A.3., revising paragraph B.1., adding paragraphs B.8. and B.9., revising paragraph C.4., adding paragraphs C.5. through C.8., and revising paragraph D.8. of Mingo National Wildlife Refuge; and

c. Revising paragraph A. of Squaw Creek National Wildlife Refuge to read as follows:

**§ 32.44 Missouri.**

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**Big Muddy National Fish and Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

5. You must unload or dismantle and case all firearms while transporting them in a motor vehicle (*see* § 27.42(b) of this chapter).

6. We restrict deer hunters on the Boone's Crossing Unit to archery methods only except for hunters on Johnson Island where State-allowed methods of take are in effect.

* * * * *

**Mingo National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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3. We prohibit the use of paint, flagging, reflectors, tacks, or other manmade materials to mark trails or hunting locations (*see* § 27.61 of this chapter).

*B. Upland Game Hunting.* * * *

1. The Public Hunting Area and the road leading to the area from the Hunter Sign-In Station are open 1½ hours before legal sunrise until 1½ hours after legal sunset.

* * * * *

8. We require that all hunters wear a hat and a shirt, vest, or coat of hunter orange that is plainly visible from all sides during the overlapping portion of the squirrel and archery deer seasons.

9. Condition A3 applies.

*C. Big Game Hunting.* * * *

* * * * *

4. Condition B8 applies.

5. We prohibit the use of salt or mineral blocks.

6. We only allow portable tree stands from 2 weeks before to 2 weeks after the State archery deer season. You must clearly mark all stands with the owner's name, address, and phone number.

7. We only allow one tree stand per deer hunter.

8. Condition A3 applies.

*D. Sport Fishing.* * * *

* * * * *

8. We allow the take of common snapping turtle and soft-shelled turtle only using pole and line. We require all anglers immediately release all alligator snapping turtles (*see* § 27.21 of this chapter).

**Squaw Creek National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of light geese on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must remain within direct sight of the guide in the hunt boundary at all times.

2. We allow the guide and hunters into the hunt boundary up to 2 hours prior to legal shooting time.

3. Hunting will stop at 12 p.m. (noon), and hunters must be out of the fields by 2 p.m.

4. We allow hunting dogs, portable blinds, and decoys at the discretion of the guide.

5. We prohibit pit blinds.

6. Hunting dogs must be under the immediate control of their handlers at all times (*see* § 26.21 of this chapter).

7. We prohibit retrieving crippled geese outside of the hunt boundary, including adjacent private land. This includes retrieval by hunting dogs.

8. We prohibit vehicles beyond the established parking area located adjacent to State Highway 118 (*see* § 27.31 of this chapter).

9. We will allow the use of ATVs to set out decoys, other hunting equipment, and hunters within the hunt boundary. We prohibit the use of ATVs to retrieve harvested or crippled geese.

10. Both the guide and hunters are responsible for ensuring that all trash, including spent shotgun shells are removed from the hunt area each day (*see* §§ 27.93 and 27.94 of this chapter).

11. Violations of these rules may result in the revocation of the guide's Special Use Permit as deemed appropriate by the refuge manager.

* * * * *

22. Amend § 32.45 Montana by:

a. Revising paragraphs A. and B. of Black Coulee National Wildlife Refuge;

b. Revising paragraphs A. and B. of Bowdoin National Wildlife Refuge;

c. Revising paragraph C. of Charles M. Russell National Wildlife Refuge; and

d. Revising paragraph A. of Hewitt Lake National Wildlife Refuge to read as follows:

**§ 32.45 Montana.**

* * * * *

**Black Coulee National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, swan, sandhill crane, and mourning dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow nonmotorized boats on refuge waters.

2. You must remove all boats, decoys, portable blinds, other personal property, and any materials brought onto the refuge for blind construction by legal sunset (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow hunting of pheasant, sharp-tailed grouse, sage grouse, gray partridge, fox, and coyote on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may only possess approved nontoxic shot (*see* § 32.2(k)).

2. Fox and coyote hunters may only use centerfire rifles, rimfire rifles, or shotguns with approved nontoxic shot.

3. We require game bird hunters to wear at least one article of blaze-orange clothing visible above the waist.

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**Bowdoin National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, swan, sandhill crane, and mourning dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must check-in and check out of the refuge daily. Before hunting, each hunter must record the date, their name, and the time checking into the refuge on a register inside the Hunter Registration Kiosk at refuge headquarters. After hunting, each hunter must record hunting data (hours hunted waterfowl and/or upland game and the number of birds harvested) before departing the refuge.

2. We prohibit air-thrust boats or boats with motors greater than 25 hp.

3. You must remove all boats, decoys, portable blinds, other personal property, and any materials brought onto the refuge for blind construction by legal sunset (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow hunting of pheasant, sharp-tailed grouse, sage grouse, gray partridge, fox, and coyote on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Condition A1 applies.

2. You must possess and carry a refuge Special Use Permit to hunt fox and coyotes.

3. You may only possess approved nontoxic shot (*see* § 32.2(k)).

4. Fox and coyote hunters may only use centerfire rifles, rimfire rifles, or shotguns with approved nontoxic shot.

5. We require game bird hunters to wear at least one article of blaze-orange clothing visible above the waist.

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**Charles M. Russell National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of big game on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow the use of portable blinds and stands. You may install stands and blinds no sooner than August 1, and you must remove them by December 15 of each year. We limit each hunter to three stands or blinds. The hunter must have their name, address, phone number, and automated licensing system number (ALS) visibly marked on the stand.

2. We allow hunting of elk on designated areas of the refuge. You must possess and carry a refuge permit to hunt elk on the refuge.

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**Hewitt Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, swan, sandhill crane, and mourning dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit air-thrust boats and boats with motors greater than 25 hp.

2. You must remove all boats, decoys, portable blinds, other personal property, and any materials brought onto the refuge for blind construction by legal sunset (*see* §§ 27.93 and 27.94 of this chapter).

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23. Amend § 32.46 Nebraska by revising the introductory text of paragraph B. of Crescent Lake National Wildlife Refuge to read as follows:

**§ 32.46 Nebraska.**

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**Crescent Lake National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow hunting of cottontail rabbit, jack rabbit, furbearer, coyote, ring-necked pheasant, and prairie grouse on designated areas of the refuge in accordance with State regulations subject to the following conditions:

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24. Amend § 32.48 New Hampshire by adding Silvio O. Conte National Fish and Wildlife Refuge to read as follows:

**§ 32.48 New Hampshire.**

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**Silvio O. Conte National Fish and Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, common snipe, sora, Virginia rail, common moorhen, and American woodcock on the Pondicherry Division of the refuge in accordance with State regulations subject to the following conditions:

1. You may only use portable blinds. You must remove all blinds, decoys, shell casings, and other personal equipment and refuse from the refuge by legal sunset (*see* §§ 27.93 and 27.94 of this chapter).

2. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back, a minimum of 400 square inches (2,600 $cm^2$) of hunter-orange clothing or material, except when hunting waterfowl.

4. We allow the use of retrieving dogs but dogs must be under voice command at all times (*see* § 26.21 of this chapter).

5. We allow hunting during the hours stipulated under the State's hunting regulations but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset. We prohibit night hunting. You must unload all firearms (*see* § 27.42 of this chapter) outside of legal hunting hours.

6. We prohibit all-terrain vehicles (ATV's or OHV's).

*B. Upland Game Hunting.* We allow hunting of coyote, fox, raccoon, woodchuck, red squirrel, eastern gray squirrel, porcupine, skunk, American crow, snowshoe hare, ring-necked pheasant, and ruffed grouse on the Pondicherry Division of the refuge in accordance with State regulations subject to the following conditions:

1. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back, a minimum of 400 square inches (2,600 $cm^2$) of hunter-orange clothing or material.

2. Conditions A5 and A6 apply.

3. We allow hunting of snowshoe hare and coyote with dogs from October 1 to March 15. You may hunt with trailing dogs on the refuge subject to the following conditions:

i. We will only allow dog training outside the established hunting seasons under a Special Use Permit issued by the refuge manager.

ii. We allow a maximum of four dogs per hunter.

iii. You must pick up all dogs the same day you release them (*see* § 26.21(b) of this chapter).

*C. Big Game Hunting.* We allow hunting of white-tailed deer, moose, black bear, and wild turkey on the Pondicherry Division of the refuge in accordance with State regulations subject to the following conditions:

1. We allow bear hunting with dogs during the established State hound season. Hunting with trailing dogs on the refuge will be subject to the following conditions:

i. We allow a maximum of four dogs per hunter.

ii. You must pick up all dogs the same day you release them (*see* § 26.21(b) of this chapter).

2. We prohibit the use of bait (*see* § 32.2(h)).

3. We allow temporary tree stands and blinds, but you must remove them (*see* §§ 27.93 and 27.94 of this chapter) by the end of the season. Your name and address must be clearly visible on the tree stand. We prohibit nails, screws, or screw-in climbing pegs to build or access a stand or blind (*See* § 32.2(i)).

4. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back a minimum of 400 square inches (2,600 $cm^2$) of hunter-orange clothing or material, except when hunting turkey or while engaged in archery hunting.

5. Conditions A5 and A6 apply.

6. We allow prehunt scouting of the refuge; however, we prohibit firearms during prehunt scouting.

7. We will only allow dog training outside the established hunting seasons under a Special Use Permit issued by the Refuge Manager.

*D. Sport Fishing.* [Reserved]

25. Amend § 32.50 New Mexico by revising paragraphs A.2. and B.3. of Bosque del Apache National Wildlife Refuge to read as follows:

**§ 32.50 New Mexico.**

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**Bosque del Apache National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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2. We allow hunting of light goose on Monday, Wednesday, and Friday during a week in January to be determined by refuge staff. We will announce hunt dates by September 1 of the previous year. Hunters must report to the refuge headquarters by 4:45 a.m. each hunt day. Legal hunting hours will run from ½ hour before legal sunrise and will not extend past 11:00 a.m. local time.

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*B. Upland Game Hunting.* * * *

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3. We allow cottontail rabbit hunting between December 1 and the last day of February.

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26. Amend § 32.51 New York by:

a. Revising paragraphs A.3.iii. and C.2.ii., and adding paragraph D.7. of Iroquois National Wildlife Refuge; and

b. Revising paragraph C. of Wertheim National Wildlife Refuge to read as follows:

**§ 32.51 New York.**

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**Iroquois National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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3. * * *

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iii. Each youth must hunt with a preapproved, nonhunting adult (*see* refuge manager for details), who must be properly licensed to participate in the program.

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*C. Big Game Hunting.* * * *

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2. * * *

ii. Only youth hunters ages 12 to 17, accompanied by a properly licensed, preapproved nonhunting adult (*see* refuge manager for details), may hunt at the refuge on the first Sunday of the season. All youth hunters must register at the refuge headquarters and attend a mandatory orientation.

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*D. Sport Fishing.* * * *

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7. We allow fishing and frogging from Schoolhouse Marsh dike and Center Marsh dike from July 15 to September 30.

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**Wertheim National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of whitetail deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow archery and shotgun hunting of white-tailed deer within portions of the refuge on specific days between October 1 and January 31.

2. We require refuge permits. We limit the number of deer hunters allowed to hunt on the refuge. We will issue permits by random selection.

3. You must take the specified number of antlerless deer as noted in the refuge hunting regulations before taking an antlered deer.

4. You must possess and carry all applicable and valid hunting licenses, permits, stamps, and a photographic identification while hunting on the refuge.

5. You must possess proof of completion of the refuge-specific orientation program upon check-in at the designated refuge hunting location.

6. You must limit driving to designated access roads and park only in designated areas (*see* § 27.31 of this chapter). We prohibit use of motorized vehicles on the refuge to retrieve white-tailed deer.

7. You must display refuge parking permits face-up on the vehicle dashboard while hunting.

8. We allow hunters to enter the refuge 1 hour before legal hunting hours. Hunters must leave the refuge no later than 1 hour after legal sunset.

9. We prohibit the use of dogs to hunt or pursue game. We prohibit driving deer by any means on the refuge. We prohibit the use of decoys to hunt deer on the refuge.

10. We prohibit carrying a loaded weapon and/or discharge of a firearm within the designated 500-foot (150 m) ''No Hunt Buffer'', vehicles, or parking areas (*see* § 27.42(b) of this chapter).

11. We prohibit shooting directly into or towards the 500-foot (150 m) ''No Hunt Buffer''.

12. We prohibit the killing or crippling of any deer without the hunter making reasonable effort to retrieve the deer and retain it in his/her actual custody.

13. Hunters assigned to Unit 5 must hunt from portable tree stands and must direct aim away from a public road and/or dwelling.

14. You must have only shotgun shells loaded with slugs during the firearms season.

15. You must wear a minimum of 400 square inches (2,600 cm2) of solid-orange clothing, visible on head, chest, and back during the firearms season. Camouflage orange does not qualify.

16. We prohibit construction or use of permanent structures while hunting. We prohibit driving a nail, spike, screw or other metal object into any tree or hunting from any tree on the refuge in

which a nail, spike, screw or other object has been driven (*see* § 32.2(i)).

17. You may use temporary or portable tree stands while hunting deer. You must remove all stands or any blinds by legal sunset (*see* §§ 27.93 and 27.94 of this chapter). We require all tree stands to have the name and address of the owner clearly printed on the stand.

18. You must report all accidents and injuries to refuge personnel as soon as possible and by no later than your departure from the refuge.

19. Failure to comply with Federal, State, and/or refuge regulations will lead to dismissal from the refuge and elimination of participation in future hunts.

20. You must abide all rules and regulations listed on the hunting permit.

21. We prohibit the use of any bait, salt, or enticement (*see* § 32.2(h)).

22. A nonhunting adult (*see* the refuge manager for details) with a valid State hunting license must accompany junior hunters.

23. We prohibit the marking of any tree, trail, or other refuge feature with flagging, paint, reflective material or any other substance.

24. You may scout hunting areas on the refuge only during designated times and days. We prohibit the use of dogs during scouting.

25. We prohibit the use of electronic calls during any hunting season.

26. We prohibit the trimming or cutting of branches larger than the diameter of a quarter (*see* § 27.61 of this chapter).

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27. Amend § 32.52 North Carolina by:

a. Revising paragraph A.5., adding paragraphs A.6., and A.7., and revising paragraphs B. and C. of Alligator River National Wildlife Refuge; and

b. Revising paragraph C.4. of Pocosin Lakes National Wildlife Refuge to read as follows:

**§ 32.52 North Carolina.**

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**Alligator River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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5. You may only possess approved nontoxic shot in the field (*see* § 32.2(k)).

6. We allow retrieving dogs in designated areas. We prohibit the use of dogs in the Gum Swamp Unit.

7. We open the refuge to daylight use only, except that we allow hunters to enter and remain in open hunting areas from 1 hour before legal shooting time until one hour after legal shooting time.

*B. Upland Game Hunting.* * * *

1. Conditions A1, A4, A5, and A7 apply.

2. We only allow dog training during the corresponding hunt season.

3. We require a Special Use Permit to hunt raccoon or opossum from ½ hour after legal sunset until ½ hour before legal sunrise.

4. We allow the use of dogs in designated areas as shown in the refuge Hunting Regulations and Permit Map brochure.

*C. Big Game Hunting.* * * *

1. Conditions A1, A4 (an adult may only supervise one youth hunter), A7 and B2 apply.

2. We close the Hyde county portion of the refuge to all hunting during State bear seasons.

3. We only allow pursuit/trailing dogs in designated areas as shown in the Refuge Hunting Regulations and Permit Map brochure.

4. Unarmed hunters may walk to retrieve stray dogs from closed areas and ''no dog hunting'' areas.

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**Pocosin Lakes National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

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4. You may only possess approved nontoxic shot (*see* § 32.2(k)) while hunting turkeys west of Evans Road and on the Pungo unit. You may use slugs, buckshot, and muzzleloader ammunition containing lead for deer hunting in these areas. We prohibit boar hunting on the Pungo Unit (they are only known to occur in the Frying Pan area of the refuge).

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28. Amend § 32.53 North Dakota by:

a. Revising paragraphs B., C., and D. of Arrowwood National Wildlife Refuge;

b. Alphabetically adding Arrowwood Wetland Management District;

c. Alphabetically adding Audubon Wetland Management District;

d. Revising paragraph C. of Chase Lake National Wildlife Refuge;

e. Alphabetically adding Chase Lake Wetland Management District;

f. Alphabetically adding Crosby Wetland Management District;

g. Revising Devils Lake Wetland Management District;

h. Alphabetically adding J. Clark Salyer Wetland Management District;

i. Alphabetically adding Kulm Wetland Management District;

j. Revising paragraphs A., B., and C. of Lake Alice National Wildlife Refuge;

k. Alphabetically adding Long Lake Wetland Management District;

l. Alphabetically adding Lostwood Wetland Management District;

m. Removing the listing for Rock Lake National Wildlife Refuge;

n. Alphabetically adding Tewaukon Wetland Management District;

o. Revising paragraph B.2. and D.13.ii. of Upper Souris National Wildlife Refuge; and

p. Alphabetically adding Valley City Wetland Management District to read as follows:

**§ 32.53 North Dakota.**

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**Arrowwood National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow hunting of pheasant, sharp-tailed grouse, partridge, cottontail rabbit, and fox on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting on the day following the close of the State firearm deer season through the end of the regular upland bird season.

2. We allow hunting of cottontail rabbit and fox on the day following the close of the State firearm deer season through March 31.

3. We allow access by foot travel only.

4. We prohibit open fires (*see* § 27.95(a) of this chapter) and camping on the refuge.

*C. Big Game Hunting.* We allow deer hunting on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit entering the refuge before legal shooting hours on the opening day of firearms deer season. Thereafter, you may enter, but not shoot, prior to legal hours. We require all hunters to be off the refuge 1½ hours after legal sunset.

2. We allow deer hunting on the refuge during the State Youth Deer Season except in designated closed areas around refuge headquarters, the wildlife observation area, and the auto tour route. Consult the refuge hunting map for open and closed hunting areas during the State Youth Deer Season.

3. Firearm deer hunters may not enter the refuge after harvesting a deer unless unarmed (*see* § 27.42(b) of this chapter) and wearing blaze orange.

4. We allow access by foot travel only. You may use a vehicle on designated refuge roads and trails to retrieve deer during the following times only: 9:30 to 10 a.m.; 1:30 to 2 p.m.; and ½ hour after legal sunset for 1 hour.

5. We allow only temporary tree stands and blinds. You must remove all tree stands and blinds at the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

6. Condition B4 applies.

*D. Sport Fishing.* We allow fishing in accordance with State regulations subject to the following conditions:

1. We only allow boats, up to a maximum of 25 hp, on Arrowwood Lake and Jim Lake from May 1 to September 30 of each fishing year.

2. We allow bank fishing along major road rights-of-way during the entire State fishing season.

3. We allow bank fishing on interior portions of the refuge from May 1 through September 30 of each fishing year. We only allow walk-in access, except for designated areas.

4. We allow fishing in the bypass channel during the regular State fishing season. We allow walk-in access along maintenance trails from June 1 through September 30 of each fishing year.

5. We allow bow fishing for rough fish along road rights-of-way in accordance with State regulations from May 1 through September 30 of each fishing year. We prohibit the use of crossbows.

6. We allow ice fishing on Arrowwood Lake, Jim Lake, and the south ⅓ of Mud Lake. We allow fish houses and vehicles (automobiles and trucks only) on the ice as conditions permit. You must remove fish houses by March 15. You may use portable fish houses after March 15, but you must remove them from the refuge each day (*see* § 27.93 of this chapter).

7. We prohibit snowmobiles and ATVs on the refuge (*see* § 27.31(f) of this chapter).

8. We prohibit water activities not related to fishing (sailing, skiing, tubing, etc.)

9. We prohibit open fires (*see* § 27.95(a) of this chapter) and camping on the refuge.

**Arrowwood Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction each day (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*C. Big Game Hunting.* We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*D. Sport Fishing.* We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by legal sunset (*see* §§ 27.93 and 27.94 of this chapter).

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**Audubon Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*C. Big Game Hunting.* We allow big game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*D. Sport Fishing.* We allow sport fishing on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

**Chase Lake National Wildlife Refuge**

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*C. Big Game Hunting.* We allow deer hunting on the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit deer hunting until the start of the State deer gun season.

2. We prohibit the use of horses for any purpose.

3. Hunters may only enter the refuge on foot.

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**Chase Lake Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*C. Big Game Hunting.* We allow big game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*D. Sport Fishing.* We allow sport fishing on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

**Crosby Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*C. Big Game Hunting.* We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*D. Sport Fishing.* We allow sport fishing on Waterfowl Production Areas

throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

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**Devils Lake Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We prohibit hunting on Little Goose and Lambs Lake Waterfowl Production Areas in Nelson county; Pleasant Lake Waterfowl Production Area in Benson County; and Hart, Nelson and Vold Waterfowl Production Areas in Grand Forks County.

2. We prohibit hunting on portions of Kellys Slough Waterfowl Production Area in Grand Forks County, as posted.

3. You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A2 apply.

2. We prohibit the use of horses for any purpose.

*C. Big Game Hunting.* We allow big game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following conditions: Conditions A1, A2, and B3 apply.

*D. Sport Fishing.* We allow sport fishing on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We prohibit fishing on Hart, Nelson, Vold, and Kellys Slough Waterfowl Production Areas in Grand Forks County.

2. You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

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**J. Clark Salyer Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*C. Big Game Hunting.* We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*D. Sport Fishing.* We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

**Kulm Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*C. Big Game Hunting.* We allow big game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*D. Sport Fishing.* We allow sport fishing on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

**Lake Alice National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on designated areas of the refuge in accordance with State regulations subject to the following conditions;

1. Refer to the refuge hunting map for designated hunting areas and information on hunting in specific zones.

2. We prohibit the use of motorized (gas and electric) boats.

3. We prohibit shooting from, on, or across any refuge road.

4. You must remove all boats, decoys, portable blinds, other personal property, and any materials brought onto the refuge for blind construction by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

5. We prohibit pit blinds.

6. We prohibit retrieval of waterfowl in the Archery Only or Deer and Late Season Pheasant areas; refer to refuge hunting map for information on hunting in specific zones.

*B. Upland Game Hunting.* We allow hunting of ring-necked pheasants, sharp-tailed grouse, gray partridge, cottontail rabbit, jackrabbit, snowshoe hare, and fox on designated areas of the refuge in accordance with State regulations subject to the following condition: Refer to the refuge hunting map for designated hunting areas and restrictions.

*C. Big Game Hunting.* We allow deer and fox hunting on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Condition A1 applies.

2. We allow archery hunting on designated areas of the refuge only; refer to the refuge hunting map for information on hunting in specific zones.

3. We prohibit the use of horses for any purpose.

4. We prohibit trapping, baiting, and spotlighting.

5. We prohibit permanent tree stands. We allow portable tree stands that hunters must remove from the refuge by the end of each day (*see* § 27.93 of this chapter). We prohibit the use of screw-in tree steps or similar objects that may damage trees (*see* § 32.2(i)).

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**Long Lake Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*C. Big Game Hunting.* We allow big game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*D. Sport Fishing.* We allow sport fishing on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

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**Lostwood Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*C. Big Game Hunting.* We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*D. Sport Fishing.* We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

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**Tewaukon Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*C. Big Game Hunting.* We allow big game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*D. Sport Fishing.* We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

**Upper Souris National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

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2. We require hunters, and nonhunters accompanying hunters, to wear the State-required, legal-orange clothing when hunting game birds during the deer gun season.

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*D. Sport Fishing.* * * *

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13. * * *

ii. SILVER BRIDGE—We allow bank fishing from the road right-of-way around the bridge abutments. You may walk onto the ice from this area for ice fishing.

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**Valley City Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*C. Big Game Hunting.* We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*D. Sport Fishing.* We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

29. Amend § 32.55 Oklahoma by:

a. Revising the introductory text of paragraph C. and redesignating paragraphs C.4., C.5., and C.6. as paragraphs C.5., C.6., and C.7, adding a new paragraph C.4., and revising paragraph C.6. of Deep Fork National Wildlife Refuge;

b. Revising paragraph A.2. and adding paragraph C.5. of Little River National Wildlife Refuge;

c. Removing paragraphs B.2. and B.3. of Optima National Wildlife Refuge;

d. Adding paragraph A.10. of Sequoyah National Wildlife Refuge; and

e. Removing paragraph B.2. and redesignating paragraph B.3. as B.2. of Washita National Wildlife Refuge to read as follows:

**§ 32.55 Oklahoma.**

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**Deep Fork National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

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4. You may hunt feral hog during any established refuge hunting season. Refuge permits and legal weapons apply for the current hunting season.

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6. You may use tree stands, but you must remove them (*see* § 27.93 of this chapter) immediately following the end of the hunt season.

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**Little River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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2. We prohibit building and use of permanent blinds. You may only use portable blinds. You must remove blinds, decoys, and all personal equipment from the refuge daily (*see* §§ 27.93 and 27.94 of this chapter).

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*C. Big Game Hunting.* * * *

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5. You may only hunt big game during designated refuge seasons.

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**Sequoyah National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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10. We prohibit hunters entering the Sandtown Bottom Unit prior to 5 a.m. during hunting season. Hunters must leave the Sandtown Bottom Unit by 1 hour after legal sunset during hunting season.

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30. Amend § 32.56 Oregon by:

a. Adding paragraphs A.9. and B.3. of Cold Springs National Wildlife Refuge;

b. Revising the introductory text of paragraph A. and revising paragraphs A.2., B., C., and D. of Malheur National Wildlife Refuge;

c. Adding paragraphs A.8. and B.1. of McKay Creek National Wildlife Refuge; and

d. Adding paragraphs A.8, B.4., and revising paragraph C. of Umatilla National Wildlife Refuge to read as follows:

**§ 32.56 Oregon.**

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**Cold Springs National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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9. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

*B. Upland Game Hunting.* * * *

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3. Condition A9 applies.

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**Malheur National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of dove, goose, duck, merganser, coot, snipe, and pigeon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

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2. You may possess only approved nontoxic shot while in the field (*see* § 32.2(k)).

*B. Upland Game Hunting.* We allow hunting of pheasant, quail, partridge, chukar, coyote, and rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting of pheasant, quail, partridge, chukar, and rabbit from the third Saturday in November until the end of the State pheasant season on designated areas of the Blitzen Valley east of Highway 205. We allow hunting of pheasant, quail, partridge, chukar, and rabbit on designated areas on Malheur Lake concurrent with the State pheasant season.

2. We allow hunting of all upland game species during authorized State seasons on designated areas of the refuge west of Highway 205 and south of Foster Flat Road.

3. You may possess only approved nontoxic shot while in the field (*see* § 32.2(k) of this chapter) on designated areas east of Highway 205 and on Malheur Lake.

*C. Big Game Hunting.* We allow hunting of deer and pronghorn on designated areas of the refuge west of Highway 205 and south of Foster Flat Road in accordance with State regulations.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing year-round in the Blitzen River, East Canal, and Mud Creek upstream from and including Bridge Creek. We allow fishing in Krumbo Reservoir from the fourth Saturday in April until the end of October.

2. We prohibit boats, except for nonmotorized boats and boats with electric motors, on Krumbo Reservoir.

**McKay Creek National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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8. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

*B. Upland Game Hunting.* * * *

1. Conditions A1, A2, and A8 apply.

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**Umatilla National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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8. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

*B. Upland Game Hunting.* * * *

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4. Condition A8 applies.

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting by special refuge permit only. You must possess and carry the special refuge permit at all times while hunting.

2. Condition A8 applies.

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31. Amend § 32.57 Pennsylvania by revising paragraphs A.2., A.3., B., C.2., C.4., D.1., D.3., D.4., D.5., and adding paragraphs D.8. and D.9. of Erie National Wildlife Refuge to read as follows:

**§ 32.57 Pennsylvania.**

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**Erie National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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2. We only allow nonmotorized boats for waterfowl hunting. Hunters must remove boats (*see* § 27.93 of this chapter) from the refuge by legal sunset.

3. We require that hunters remove blinds and decoys from the refuge by legal sunset (*see* §§ 27.93 and 27.94 of this chapter)

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*B. Upland Game Hunting.* We allow hunting of grouse, squirrel, rabbit, woodchuck, pheasant, quail, raccoon, fox, coyote, skunk, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting on the refuge from September 1 through the end of February.

2. We require all persons to possess and carry a refuge Special Use Permit while hunting fox, coyote, and raccoon on the refuge.

3. We allow dogs for hunting; however, they must be under the immediate control of the hunter at all times (*see* § 26.21(b) of this chapter).

*C. Big Game Hunting.* * * *

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2. Hunters must remove blinds, scaffolds, tree stands, and decoys (*see* § 27.93 of this chapter) from the refuge by legal sunset.

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4. We require all persons to possess and carry a refuge Special Use Permit while hunting bear on the refuge.

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*D. Sport Fishing.* * * *

1. We allow bank fishing only on the Seneca Unit of the refuge. We prohibit wading.

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3. We prohibit the use of watercraft for fishing, with the exception of Area 5 where we allow nonmotorized watercraft use from the second Saturday in June through September 15. They must remain in an area from the dike to 3,000 feet (900 m) upstream.

4. We require that all anglers must remove watercraft from the refuge by legal sunset (*see* § 27.93 of this chapter).

5. We allow ice fishing in Areas 5 and 7 only.

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8. We prohibit the possession of live baitfish on the Seneca Unit.

9. We prohibit the taking or possession of shellfish on the Seneca Unit of the refuge.

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32. Amend § 32.60 South Carolina by:

a. Adding paragraphs C.15. and C.16. of Pinckney Island National Wildlife Refuge; and

b. Adding paragraph B.4. of Waccamaw National Wildlife Refuge to read as follows:

**§ 32.60 South Carolina.**

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**Pinckney Island National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

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15. Hunters age 15 and younger must possess and carry a valid hunter education card in order to hunt.

16. Youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. One adult may supervise no more than two youth hunters.

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**Waccamaw National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

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4. We prohibit squirrel hunting from a boat or other water conveyance on the refuge.

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33. Amend § 32.61 South Dakota by:

a. Revising Huron Wetland Management District;

b. Revising Lake Andes Wetland Management District;

c. Revising Madison Wetland Management District;

d. Removing the listing of Pocasse National Wildlife Refuge;

e. Revising Sand Lake Wetland Management District; and

f. Revising Waubay Wetland Management District to read as follows:

**§ 32.61 South Dakota.**

* * * * *

**Huron Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*C. Big Game Hunting.* We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We allow hunters to leave portable tree stands and free-standing elevated platforms on Waterfowl Production Areas from the first Saturday after August 25 through February 15.

2. You must label portable tree stands and free-standing elevated platforms with your name and address or current hunting license number so it is legible from the ground.

3. We prohibit the use of horses for any purpose.

4. You must remove portable ground blinds and other personal property by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*D. Sport Fishing.* We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

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**Lake Andes Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*C. Big Game Hunting.* We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We allow hunters to leave portable tree stands and free-standing elevated platforms on Waterfowl Production Areas from the first Saturday after August 25 through February 15.

2. You must label portable tree stands and free-standing elevated platforms with your name and address or current hunting license number so it is legible from the ground.

3. We prohibit the use of horses for any purpose.

4. You must remove portable ground blinds and other personal property by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*D. Sport Fishing.* We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

**Madison Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on

Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*C. Big Game Hunting.* We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We allow hunters to leave portable tree stands and free-standing elevated platforms on Waterfowl Production Areas from the first Saturday after August 25 through February 15.

2. You must label portable tree stands and free-standing elevated platforms with your name and address or current hunting license number so it is legible from the ground.

3. We prohibit the use of horses for any purpose.

4. You must remove portable ground blinds and other personal property by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*D. Sport Fishing.* We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

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**Sand Lake Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*C. Big Game Hunting.* We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We allow hunters to leave portable tree stands and free-standing elevated platforms on Waterfowl Production Areas from the first Saturday after August 25 through February 15.

2. You must label portable tree stands and free-standing elevated platforms with your name and address or current hunting license number so it is legible from the ground.

3. We prohibit the use of horses for any purpose.

4. You must remove portable ground blinds and other personal property by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*D. Sport Fishing.* We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

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**Waubay Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

*C. Big Game Hunting.* We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We allow hunters to leave portable tree stands and free-standing elevated platforms on Waterfowl Production Areas from the first Saturday after August 25 through February 15.

2. You must label portable tree stands and free-standing elevated platforms with your name and address or current hunting license number so it is legible from the ground.

3. We prohibit the use of horses for any purpose.

4. You must remove portable ground blinds and other personal property by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

*D. Sport Fishing.* We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

34. Amend § 32.63 Tennessee by:

a. Revising paragraphs A.3., A.5., B.2., B.3., C.1., C.4., and D. of Chickasaw National Wildlife Refuge;

b. Revising Hatchie National Wildlife Refuge; and

c. Revising paragraphs A.3., A.5., A.8., B.2., B.3., C.1., C.4., C.5., D.4., and D.7. of Lower Hatchie National Wildlife Refuge to read as follows:

**§ 32.63 Tennessee.**

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**Chickasaw National Wildlife Refuge**

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*A. Migratory Game Bird Hunting.*

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3. You must possess and carry a signed refuge permit and report game taken as specified within the permit.

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5. Mourning dove, woodcock, and snipe seasons close during all firearms and muzzleloader deer seasons.

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*B. Upland Game Hunting.* * * *

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2. Spring squirrel season is closed on the refuge.

3. Squirrel, rabbit, and quail seasons close during all firearms and muzzleloader deer seasons.

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*C. Big Game Hunting.* * * *

1. Conditions A1 through A3, and A7 through A8 (each adult may supervise only one youth hunter) apply.

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4. We only allow the use of portable blinds and tree stands on the refuge. You must remove blinds, tree stands, and all other personal equipment (*see* §§ 27.93 and 27.94 of this chapter) from the refuge at the end of each day's hunt.

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow fishing from legal sunrise to legal sunset.

2. We only allow fishing with pole and line or rod and reel.

3. We prohibit possession of unauthorized fishing gear, including trotlines, limblines, juglines, yo-yos, nets, spears, and snag hooks, while fishing on the refuge.

4. We allow the use of bow and arrow or a gig to take nongame fish on refuge waters.

5. We prohibit taking frog or turtle on the refuge (*see* § 27.21 of this chapter).

* * * * *

**Hatchie National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The refuge is a day-use area only, with the exception of legal hunting/fishing activities.

2. We prohibit the use of motorized off-road vehicles (*e.g.*, ATVs) on the refuge (*see* § 27.31(f) of this chapter).

3. You must possess and carry a signed refuge permit and report game taken as specified within the permit.

4. We only allow waterfowl hunting on Tuedays, Thursdays, and Saturdays. Legal hunting hours for duck, goose, coot, and merganser are ½ hour before legal sunrise to 12 p.m. (noon).

5. Mourning dove, woodcock, and snipe seasons close during all firearms and muzzleloader deer seasons.

6. We allow only portable blinds, and hunters must remove all boats, blinds, and decoys (*see* §§ 27.93 and 27.94 of this chapter) from the refuge by 1 p.m. daily.

7. We allow hunters to access the refuge no more than 2 hours before legal sunrise, and they must leave the refuge no more than 2 hours after legal sunset.

8. Each youth hunter (under age 16) must remain within sight and normal voice contact of an adult (age 21 or older).

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, quail, raccoon, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A3 and A7 through A8 apply.

2. Spring squirrel season is closed on the refuge.

3. Squirrel, rabbit, and quail seasons close during all firearms and muzzleloader deer seasons.

4. Hunting hours for raccoon and opossum are legal sunset to legal sunrise.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A3, A7, and A8 (each adult may supervise only one youth hunter) apply.

2. You may only participate in the refuge deer gun hunts with a special quota permit issued through random drawing. Information for permit applications and season dates is available at the refuge headquarters.

3. You may only possess approved nontoxic shot (*see* § 32.2(k)) while hunting turkey.

4. We only allow the use of portable blinds and tree stands on the refuge. You must remove blinds, tree stands, and all other personal equipment (*see* §§ 27.93 and 27.94 of this chapter) from the refuge at the end of each day's hunt.

5. We allow archery-only hunting between State Highway 76 and Interstate 40.

6. We only allow archery hunting the first 16 days of the State season.

7. We are closed to Youth-Deer hunting.

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A2 apply.

2. We only allow fishing with pole and line or rod and reel.

3. We prohibit possession of unauthorized fishing gear, including trotlines, limblines, juglinels, yo-yos, nets, spears, and snag hooks, while fishing on the refuge.

4. We allow use of a bow and arrow or gig to take nongame fish on refuge waters.

5. We prohibit taking frog or turtle on the refuge (*see* § 27.21 of this chapter).

6. We seasonally close the sanctuary areas of the refuge to the public November 15 through March 15.

7. We open Oneal Lake for fishing during a restricted season and for authorized special events. Information on event and season dates is available at the refuge headquarters.

8. You must immediately release all largemouth bass under 14 inches (30 cm) in length on Goose and Quail Hollow Lakes.

9. We allow the use of nonmotorized boats and boats with electric motors only.

10. We only allow bank fishing on Goose Lake.

**Lower Hatchie National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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3. You must possess and carry a signed refuge permit and report game taken as specified within the permit.

* * * * *

5. Mourning dove, woodcock, and snipe seasons close during all firearms and muzzleloader deer seasons.

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8. We close Sunk Lake Public Use Natural Area to all migratory game bird hunting, and we close the southern unit of Sunk Lake Public Use Natural Area to all hunting.

* * * * *

*B. Upland Game Hunting.* * * *

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2. Spring squirrel season is closed on the refuge.

3. Squirrel, rabbit, and quail seasons close during all firearms and muzzleloader deer seasons.

* * * * *

*C. Big Game Hunting.* * * *

1. Conditions A1 through A3, and A7 through A9 (each adult may supervise only one youth hunter) apply.

* * * * *

4. We only allow the use of portable blinds and tree stands on the refuge. You must remove blinds, tree stands, and all other personal equipment (*see* §§ 27.93 and 27.94 of this chapter) from the refuge at the end of each day's hunt.

5. We allow archery-deer hunting only on the northern unit of Sunk Lake Public Use Natural Area.

*D. Sport Fishing.* * * *

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4. We allow use of a bow and arrow or a gig to take nongame fish on refuge waters.

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7. We allow the use of nonmotorized boats and boats with electric motors only on Sunk Lake Public Use Natural Area.

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35. Amend § 32.63 Texas by:

a. Redesignating paragraphs A.1. through A.18. as paragraphs A.2. through A.19., adding a new paragraph A.1., and revising paragraphs A.12., A.13., and A.14. of Anahuac National Wildlife Refuge;

b. Redesignating paragraphs A.1. through A.3. as paragraphs A.2. through A.4. and adding a new paragraph A.1. of Big Boggy National Wildlife Refuge;

c. Redesignating paragraphs A.1. through A.4. as paragraphs A.2. through A.5., adding a new paragraph A.1., and revising paragraph D. of Brazoria National Wildlife Refuge;

d. Revising paragraphs C.2., C.3., C.5., C.6., and adding paragraph C.17. of Laguna Atascosca National Wildlife Refuge;

e. Revising the introductory text of paragraph A., redesignating paragraphs A.1. through A.15. as paragraphs A.2. through A.16., adding a new paragraph

A.1., revising paragraphs A.4. and A.5., revising paragraph D.5., and removing paragraph D.6. of McFaddin National Wildlife Refuge;

f. Redesignating paragraphs A.1. through A.4. as paragraphs A.2. through A.5., adding a new paragraph A.1., revising paragraph A.2., and revising paragraph D. of San Bernard National Wildlife Refuge;

g. Redesignating paragraphs A.1. through A.13. as paragraphs A.2. through A.14., adding a new paragraph A.1., revising paragraphs A.5., A.6., A.11., A.13., and revising paragraph D.4. of Texas Point National Wildlife Refuge; and

h. Revising paragraphs B.2., B.4., and the introductory text of paragraph D. of Trinity River National Wildlife Refuge to read as follows:

**§ 32.63 Texas.**

* * * * *

**Anahuac National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

* * *

1. Season dates will be concurrent with the State for the September teal season, youth-only season, and duck and coot regular season in the Texas South Zone, and goose regular season in the Texas East Zone, with the exception that hunting we will prohibit duck (not including the September teal and youth-only seasons) and coot hunting on the refuge until the last Saturday in October. If the State-specified duck and coot regular season opens later than the last Saturday in October, then hunting on the refuge will open consistent with the State-specified season date.

* * * * *

12. We prohibit the use of airboats, marsh buggies, ATVs (*see* § 27.31(f) of this chapter) and personal watercraft.

13. On inland waters of refuge hunt areas open to motorized boats, we restrict the operation of motorized boats to lakes, ponds, ditches, and other waterways. We prohibit the operation of motorized boats on or through emergent wetland vegetation.

14. On inland waters of the refuge hunt areas open to motorized boats, we restrict the use of boats powered by air-cooled or radiator-cooled engines to those powered by a single engine of 25 hp or less and utilizing a propeller 9 inches (22.5 cm) in diameter or less.

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**Big Boggy National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

* * *

1. Season dates will be concurrent with the State for the September teal season, youth-only season, and duck and coot regular season in the Texas South Zone, and goose regular season in the Texas East Zone, with the exception that we will prohibit duck (not including the September teal and youth-only seasons) and coot hunting on the refuge until the last Saturday in October. If the State-specified duck and coot regular season opens later than the last Saturday in October, then hunting on the refuge will open consistent with the State-specified season date.

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**Brazoria National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

* * *

1. Season dates will be concurrent with the State for the September teal season, youth-only season, and duck and coot regular season in the Texas South Zone, and goose regular season in the Texas East Zone, with the exception that we will prohibit duck (not including the September teal and youth-only seasons) and coot hunting on the refuge until the last Saturday in October. If the State-specified duck and coot regular season opens later than the last Saturday in October, then hunting on the refuge will open consistent with the State-specified season date.

* * * * *

*D. Sport Fishing.* We allow fishing in accordance with State regulations subject to the following conditions:

1. We allow fishing only on Nick's Lake, Salt Lake, and Lost Lake and along the Salt Lake Weir Dike and the Bastrop Bayou Public Fishing Areas.

2. We allow access for shore fishing at Bastrop Bayou, Clay Banks and Salt Lake Public Fishing Areas, and Salt Lake Weir Dike.

3. We open Bastrop Bayou to fishing 24 hours a day; we prohibit camping.

4. We open all other fishing areas from legal sunrise to legal sunset.

5. We only allow nonmotorized boat launching at the Salt Lake Public Fishing Area. The refuge provides no other boat launching facilities.

6. We prohibit the use of trotlines, sail lines, set lines, jugs, gigs, spears, bush hooks, snatch hooks, cross bows, or bows and arrows of any type.

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**Laguna Atascosa National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

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2. We allow archery and firearm hunting on designated units of the refuge. Units 1, 2, 3, 5, 6, and 8 are open to archery hunting during designated dates. Units 2, 3, 5, 6, and 8 are open to firearm hunting during designated dates. We close the following areas to hunting: Adolph Thomae, Jr. County Park in Unit 3, posted ''No Hunting Zones'' within all hunt units, La Selva Verde Tract (Armstrong), Waller Tract, COHYCO, Inc. Tract, Bahia Grande Unit, and South Padre Unit.

3. We offer hunting during specific portions of the State hunting season. We determine specific deer hunt dates annually, and they usually fall within November, December, and January. We may provide special feral pig and nilgai antelope hunts to reduce populations at any time during the year.

* * * * *

5. We require hunters to visibly wear 400 square inches (2,600 $cm^2$) of hunter orange, which includes wearing a minimum of 144 square inches (936 $cm^2$) visible on the chest, a minimum of 144 square inches (936 $cm^2$) visible on the back, and a hunter-orange hat or cap visible on the head when in the field. We allow hunter-orange camouflage patterns. We allow archery hunters during the archery-only hunts to remove their hunter orange in the field only when hunting at a stationary location.

6. Each youth hunter, ages 12 to 17, must be accompanied by and remain within sight and normal voice contact of an adult age 18 or older. Hunters must be at least age 12.

* * * * *

17. We require written documentation from a licensed physician to certify a hunter as temporarily or permanently disabled or mobility impaired no later than 10 calendar days before the start of the scouting or hunt period. We allow the use of all-terrain vehicles (ATVs), which excludes motorcycles and full-size passenger vehicles, for hunters with mobility impairments and other disabilities through the issuance of a Special Use Permit.

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**McFaddin National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Season dates will be concurrent with the State for the September teal season, youth-only season, and duck and coot regular season in the Texas South Zone, and goose regular season in the Texas East Zone, with the exception that we will prohibit duck (not including the September teal and youth-only seasons) and coot hunting on the refuge until the last Saturday in October. If the State-specified duck and coot regular season opens later than the

last Saturday in October, then hunting on the refuge will open consistent with the State-specified season date.

* * * * *

4. You may access hunt areas by foot, nonmotorized watercraft, outboard motorboat, or airboat. Airboats may not exceed 10 hp with direct drive with a propeller length of 48 inches (120 cm) or less. Engines may not exceed 2 cylinders and 484 cc. We prohibit all other motorzied vehicles. We prohibit marsh buggies, ATVs, and personal watercraft (*see* § 27.31(f) of this chapter).

5. On inland waters of the refuge open to motorized boats, we restrict the use of boats powered by air-cooled or radiator-cooled engines to those powered by a single engine of 25 hp or less and utilizing a propeller 9 inches (22.5 cm) in diameter or less.

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*D. Sport Fishing.* * * *

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5. Conditions A5 and A6 apply.

**San Bernard National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

* * *

1. Season dates will be concurrent with the State for the September teal season, youth-only season, and duck and coot regular season in the Texas South Zone, and goose regular season in the Texas East Zone, with the exception that we will prohibit duck (not including the September teal and youth-only seasons) and coot hunting on the refuge until the last Saturday in October. If the State-specified duck and coot regular season opens later than the last Saturday in October, then hunting on the refuge will open consistent with the State-specified season date.

2. We prohibit the building or use of pits and permanent blinds (*see* §§ 27.92 and 27.93 of this chapter).

* * * * *

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing only on the refuge portions of Cow Trap Lakes, Cedar Lakes, and along Cedar Lake Creek.

2. We prohibit the use of trotlines, sail lines, set lines, jugs, gigs, spears, bush hooks, snatch hooks, cross bows, or bows and arrows of any type.

**Texas Point National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

* * *

1. Season dates will be concurrent with the State for the September teal season, youth-only season, and duck and coot regular season in the Texas South Zone, and goose regular season in the Texas East Zone, with the exception that we will prohibit duck (not including the September teal and youth-only seasons) and coot hunting on the refuge until the last Saturday in October. If the State-specified duck and coot regular season opens later than the last Saturday in October, then hunting on the refuge will open consistent with the State-specified season date.

* * * * *

5. You may access hunt areas by foot, nonmotorized watercraft, outboard motorboat, or airboat. Airboats may not exceed 10 hp with direct drive with a propeller length of 48 inches (120 cm) or less. Engines may not exceed 2 cylinders and 484 cc. We prohibit all other motorized vehicles. We prohibit marsh buggies, ATVs, and personal watercraft (*see* § 27.31(f) of this chapter).

6. On inland waters of the refuge open to motorized boats, we restrict the use of boats powered by air-cooled or radiator-cooled engines to those powered by a single engine of 25 hp or less and utilizing a propeller 9 inches (22.5 cm) in diameter or less.

* * * * *

11. We prohibit pits and permanent blinds. We allow portable blinds or temporary natural vegetation blinds. You must remove portable blinds (*see* §§ 27.93 and 27.94 of this chapter) from the refuge daily.

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13. Dogs accompanying hunters must be under the immediate control of handlers at all times (*see* § 26.21(b) of this chapter).

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*D. Sport Fishing.* * * *

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4. Conditions A6 and A7 apply.

**Trinity River National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

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2. We allow hunting during a designated 23-day season. Hunters may enter the refuge and park in an assigned parking area no earlier than 4:30 a.m. We allow hunting from ½ hour before legal sunrise to legal sunset. We require hunters to return a data log card.

* * * * *

4. We prohibit the use of dogs, feeders, baiting (*see* § 32.2(h)), campsites, fires (*see* § 27.95(a) of this chapter), horses, bicycles, and all-terrain vehicles.

* * * * *

*D. Sport Fishing.* We allow fishing on most refuge tracts in accordance with State regulations subject to the following conditions:

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36. Amend § 32.64 Utah by revising paragraph A.1. of Bear River Migratory Bird Refuge to read as follows:

**§ 32.64 Utah.**

* * * * *

**Bear River Migratory Bird Refuge**

*A. Migratory Game Bird Hunting.*

* * *

1. Hunters may not shoot or hunt within 100 yards (90 m) of principal refuge roads (the tour route).

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37. Amend § 32.66 Virginia by:

a. Revising paragraph C.2.vi. of Chincoteague National Wildlife Refuge;

b. Revising paragraphs C.7. through C.12. and adding paragraph C.13. of James River National Wildlife Refuge;

c. Revising paragraphs A.3. and A.7. of Plum Tree Island National Wildlife Refuge;

d. Revising paragraphs C.1., C.5. through C.8., and adding paragraph C.9. of Presquile National Wildlife Refuge; and

e. Revising paragraph C., D.1., D.2., and D.5. of Rappahannock River Valley National Wildlife Refuge to read as follows:

**§ 32.66 Virginia.**

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**Chincoteague National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

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2. * * *

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vi. We reserve Zone 2 for hunters confined to wheelchairs. Hunters confined to wheelchairs must remain on the paved trail or overlook platform on Woodland Trail. Hunters confined to wheelchairs who require assistance retrieving or dressing harvested animals must have a nonhunting assistant available.

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**James River National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

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7. During firearms season, all hunters must wear in a visible manner on head, chest, and back a minimum of 400 square inches (2,600 $cm^2$) of solid-colored, hunter-orange clothing or material.

8. During archery only season, archers must wear in a visible manner a solid-colored, hunter-orange hat or cap while moving to and from their stand.

9. We require that firearm hunters remain within 25 feet (7.5 m) of their assigned stand unless tracking or retrieving a wounded deer.

10. We allow hunters to retrieve wounded deer from closed areas with prior consent from a refuge employee only.

11. We require hunters to unload all weapons while on the refuge (*see* § 27.42(b) of this chapter), except when at their assigned stand.

12. We prohibit the discharge of firearm or archery equipment across or within refuge roads, including roads closed to vehicles.

13. You must be at least age 18 to hunt without an accompanying, qualified adult. Youth hunters between ages 12 and 17 may only hunt when accompanied by an adult age 21 or older, who must also possess and carry a valid hunting license. The minimum age for hunters is 12.

* * * * *

**Plum Tree Island National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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3. You may hunt from: the location of your choice, unimproved shore locations, camouflaged boats (float blinds) anchored to the shore, or temporary blinds erected on the interior of the island.

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7. On all hunt days, hunters must retrieve and remove all decoys, temporary blinds, and equipment and leave Cow Island by 1 p.m. (*see* §§ 27.93 and 27.94 of this chapter).

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**Presquile National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

1. We require hunters to purchase a refuge hunt permit. You may obtain permits by contacting the Charles City office at (804) 829–9020. The hunter must possess and carry the signed permit while on refuge property.

* * * * *

5. We allow only portable tree stands that hunters must remove at the end of each hunt day (*see* §§ 27.93 and 27.94 of this chapter).

6. We require hunters to wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 $cm^2$) of solid-colored, hunter-orange clothing or material.

7. We require hunters to remain with 25 feet (7.5 m) of their designated stand unless tracking or retrieving a wounded deer.

8. We require all hunters to unload all firearms while on the refuge, except when at their assigned stand (*see* § 27.42(b) of this chapter).

9. You must be at least age 18 to hunt without an accompanying, qualified adult. Youth hunters between ages 12 and 17 may only hunt when accompanied by an adult age 21 or older who must also possess and carry a valid hunting license. The minimum age for hunters is 12.

* * * * *

**Rappahannock River Valley National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunters to purchase a refuge hunt permit. You may obtain permits by contacting the refuge headquarters at (804) 333–1470. The hunter must possess and carry the permit while on refuge property.

2. We allow shotgun, muzzleloader, and archery hunting on designated refuge hunt days.

3. We allow the take of two deer of either sex per day.

4. We prohibit dogs.

5. We allow only portable tree stands that hunters must remove at the end of each hunt day (*see* §§ 27.93 and 27.94 of this chapter).

6. During firearm seasons, all hunters must wear in a visible manner on head, chest, and back a minimum of 400 square inches (2,600 $cm^2$) of solid-colored, hunter-orange clothing or material.

7. During archery only season, archers must wear in a visible manner a solid-colored, hunter-orange hat or cap while moving to and from their stand.

8. We prohibit the possession of loaded firearms or nocked arrows while on the refuge roads.

9. We require hunters to unload all weapons while traveling between the hunting sites (*see* § 27.42(b) of this chapter).

10. We prohibit the discharge of a firearm or archery equipment across or within refuge roads, including roads closed to vehicles.

11. We allow hunters to retrieve wounded deer from closed areas only with prior consent from a refuge employee.

12. You must be at least age 18 to hunt without an accompanying, qualified adult. Youth hunters between ages 12 and 17 may only hunt when accompanied by an adult age 21 or older who must also possess and carry a valid hunting license. The minimum age for hunters is 12.

*D. Sport Fishing.* * * *

1. We allow fishing access from legal sunrise to legal sunset.

2. We allow fishing from the Wilna Pond pier, banks of the dam, and watercraft. We prohibit fishing from the aluminum catwalk.

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5. We prohibit the use of lead sinkers.

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38. Amend § 32.67 Washington by:

a. Adding paragraphs A.3., B.3., and C.3. of Columbia National Wildlife Refuge;

b. Revising paragraphs A. and C. of Conboy Lake National Wildlife Refuge;

c. Adding paragraph A.5., removing paragraphs B.4., B.5., adding a new paragraph B.4., removing paragraphs C.3., and C.4., and adding a new paragraph C.3. of Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge;

d. Revising paragraphs A. and C. of Julia Butler Hansen Refuge for the Columbian White-Tailed Deer;

e. Revising paragraphs A., B., and C. of Little Pend Oreille National Wildlife Refuge;

f. Adding paragraphs A.14. and B.5. and revising paragraph C. of McNary National Wildlife Refuge;

g. Revising paragraphs A. and D. of Ridgefield National Wildlife Refuge;

h. Adding paragraphs A.9 and B.4. of Toppenish National Wildlife Refuge;

i. Adding paragraphs A.9. and B.3, and revising paragraph C. of Umatilla National Wildlife Refuge; and

j. Adding paragraphs A.7. and B.5, revising the introductory text of paragraph C., revising paragraph C.3., and adding paragraph C.5. of Willapa National Wildlife Refuge to read as follows:

**§ 32.67 Washington.**

* * * * *

**Columbia National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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3. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

*B. Upland Game Hunting.* * * *

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3. Condition A3 applies.

*C. Big Game Hunting.* * * *

* * * * *

3. Condition A3 applies.

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**Conboy Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of dove, goose, duck, coot, and common snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Waterfowl and snipe hunters may possess only approved nontoxic shot while in the field (*see* § 32.2(k)).

2. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

* * * * *

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following condition: Condition A2 applies.

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**Hanford Reach National Monument/ Saddle Mountain National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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5. We prohibit shooting or discharging any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

*B. Upland Game Hunting.* * * *

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4. Condition A5 applies.

*C. Big Game Hunting.* * * *

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3. Condition A5 applies.

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**Julia Butler Hansen Refuge for the Columbian White-Tailed Deer**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, and common snipe on designated areas of the Hunting Island Unit in accordance with State regulations subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field (*see* § 32.2(k)).

2. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

* * * * *

*C. Big Game Hunting.* We allow hunting of elk on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We conduct the refuge hunt by State permit only. We require hunters to possess and carry current Washington State elk licenses, valid for the refuge's hunt unit.

2. We allow a maximum of ten hunters to use the refuge in any one day, with one hunt period consisting of 5 consecutive days (Monday through Friday only).

3. We allow a maximum of four hunt periods per hunt season; two regular permit hunts, and if required, two ''as needed'' permit hunts.

4. We will use the State Second Elk Tag As-Needed hunt program as necessary to control elk numbers during months outside the normal hunting season, except we prohibit hunting during the period April through August.

5. The State will publish the hunting dates, number of permits to be issued, and other regulations for the refuge hunt in the State's Big Game Hunting pamphlet. You may also obtain this information by contacting the refuge headquarters.

6. We allow hunting of elk using muzzleloading firearms only.

7. We require hunters to attend a refuge-specific orientation session each year prior to hunting on the refuge.

8. We allow hunting on Mondays through Fridays only. We close the refuge to hunting on weekends and Federal holidays.

9. We require hunters to sign in and out each day at the refuge headquarters. When signing out for the day, you must report hunting success, failure, and any hit-but-not retrieved animals.

10. No more than one unlicensed person may assist each licensed hunter during the hunt.

11. Additional persons may assist hunters during elk retrieval only.

12. We prohibit hunters from operating motorized vehicles on the refuge.

13. Condition A2 applies.

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**Little Pend Oreille National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit waterfowl hunting on any creek or stream.

2. We allow hunting during approved State hunting seasons occurring September through December and during the State spring wild turkey season only. We prohibit hunting and discharge of firearms during all other periods.

3. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

*B. Upland Game Hunting.* We allow hunting of upland game on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit use of dogs except for hunting and retrieving upland game birds.

2. Conditions A2 and A3 apply.

*C. Big Game Hunting.* We allow hunting of big game on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit all use of dogs for hunting of big game.

2. Conditions A2 and A3 apply.

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**McNary National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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14. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

*B. Upland Game Hunting.* * * *

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5. Condition A14 applies.

*C. Big Game Hunting.* We allow hunting of deer only on the Stateline, Juniper Canyon, and Wallula Units in accordance with State regulations subject to the following conditions:

1. On the Wallula Unit, we only allow shotgun and archery hunting.

2. Condition A14 applies.

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**Ridgefield National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting by special refuge permit only. You must possess and carry the special refuge permit at all times while hunting.

2. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

* * * * *

*D. Sport Fishing.* We allow fishing and frogging on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing and frogging from March 1 through September 30 only.

2. We allow fishing and frogging from legal sunrise to legal sunset only.

**Toppenish National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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9. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

*B. Upland Game Hunting.* * * *

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4. Condition A9 applies.

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**Umatilla National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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9. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

*B. Upland Game Hunting.* * * *

* * * * *

3. Condition A9 applies.

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting by special refuge permit only. You must possess and carry the special refuge permit at all times while hunting.

2. Condition A9 applies.

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**Willapa National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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7. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

*B. Upland Game Hunting.* * * *

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5. Condition A7 applies.

*C. Big Game Hunting.* We allow hunting of deer, elk, and bear on Long Island, and deer and elk only in designated areas of the refuge north of the Bear River and east of Wallapa Bay, in accordance with State regulations subject to the following conditions:

* * * * *

3. We prohibit bear hunting on any portion of the refuge except Long Island.

* * * * *

5. Condition A7 applies.

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39. Amend § 32.69 Wisconsin by revising paragraphs B.1. and B.4., adding paragraph B.6., and revising paragraph C. of Necedah National Wildlife Refuge to read as follows:

**§ 32.69 Wisconsin.**

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**Necedah National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

1. Shotgun hunters may possess only approved nontoxic shot while hunting on the refuge (*see* § 32.2(k)). This includes turkey hunters.

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4. You may use dogs only when hunting migratory game birds and upland game (except raccoon).

* * * * *

6. You may possess only unloaded guns in the retrieval zone of the Refuge Area 2 between 20th Street West and Suk-Cerney flowage during the State waterfowl hunting season, except while hunting deer during the gun deer season.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit possession of a loaded firearm or a nocked arrow on a bow within 50 feet (15 m) of the centerline of all public roads. Also, during the gun deer season, we prohibit possession of a loaded firearm within 50 feet (15 m) of the center of refuge trails, and we prohibit discharge of guns from, across, down, or alongside these trails.

2. We prohibit possession of a centerfire rifle capable of holding more than seven cartridges.

3. We prohibit construction or use of permanent blinds, stands, or ladders.

4. You may use portable elevated devices but must lower them to ground level at the close of shooting hours each day. You must remove all blinds, stands, platforms, and ladders from the refuge at the end of the hunting season (*see* §§ 27.93 and 27.94 of this chapter).

5. Hunters must clearly mark all non-natural blinds, stands, platforms, and ladders on the exterior with the owner's name and address in letters that are 1 inch (2.5 cm) high. You may also use an attached metal tag with stamped or engraved lettering that is clearly visible.

6. We permanently close Refuge Area 1 to all hunting.

7. Refuge Area 2 is open to deer hunting during State archery, gun, and muzzleloader seasons, except for any October special Zone-T gun hunts.

8. Refuge Area 3 is open to deer hunting during the State regular gun, muzzleloader, and late archery seasons. Unarmed deer hunters may enter Area 3 to scout beginning the Saturday prior to the gun deer season.

9. We prohibit target or practice shooting.

10. You may utilize clothes pins marked with flagging or reflective material. We allow no other types of marking. You must clearly identify the owner's name and address on the clothes pin or the flagging itself. Hunters must remove all clothes pins by the last day of archery season.

11. Beginning the Saturday prior to the opening of the State regular gun deer season, you may use nonmotorized boats on Sprague-Goose Pools until freeze-up in order to access areas for deer hunting.

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Dated: June 27, 2005.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 05–13165 Filed 7–6–05; 4:09 pm]

**BILLING CODE 4310–55–P**


Federal Register

**Tuesday,**
**July 12, 2005**

## Part III

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Parts 11 and 121**

**Use of Certain Portable Oxygen Concentrator Devices Onboard Aircraft; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 11 and 121**

**[Docket No.: FAA–2004–18596; SFAR No. 106]**

**RIN 2120–AI30**

## Use of Certain Portable Oxygen Concentrator Devices Onboard Aircraft

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This Special Federal Aviation Regulation (SFAR) will permit passengers to use certain portable oxygen concentrator (POC) devices on aircraft, provided certain conditions in this SFAR are satisfied. The SFAR includes a POC preparation requirement for carry-on baggage transport, and a battery-packaging standard necessary for the safe carriage of extra POC batteries in carry-on baggage. This rulemaking action is necessary to address the travelling needs of people on oxygen therapy.

**DATES:** This SFAR becomes effective August 11, 2005.

**FOR FURTHER INFORMATION CONTACT:** David L. Catey, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3732.

**SUPPLEMENTARY INFORMATION:**

### Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's web page at *http://www.faa.gov/avr/arm/index.cfm*; or

(3) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

### Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.cfm*.

### Authority for This Rulemaking

The FAA is authorized to issue this pursuant to 49 U.S.C. 44701. Under that section, the FAA is authorized to establish regulations and minimum standards for ''other practices methods and procedure the Administrator finds necessary for air commerce and national security.''

### Background

This final rule responds to comments received on notice of proposed rulemaking (NPRM) titled ''Use of Portable Oxygen Concentrator Devices Onboard Aircraft,'' (69 FR 42324; July 14, 2004). The NPRM proposed a Special Federal Aviation Regulation (SFAR) to allow passengers to operate certain portable oxygen concentrator (POC) devices on aircraft if certain conditions detailed in the proposal were met.

As stated in the NPRM, the FAA recognizes that there is a critical need to improve service for passengers who have a medical need to travel with medical oxygen. Passengers requiring medical oxygen during air travel have faced significant difficulties obtaining adequate air service. Many carriers do not provide medical oxygen during air travel. Those carriers that provide the service often charge for the service—sometimes at a cost that equals the price of a ticket. Additionally, it can be difficult to coordinate service between the carrier and a supplier of medical oxygen to ensure passenger coverage both at the terminal and on the aircraft. Sometimes, the passenger must spend at least part of the time travelling without medical oxygen due to service problems with the oxygen provider.

Compressed oxygen is regulated as a Hazardous Material by the Pipeline and Hazardous Materials Safety Administration (PHMSA), formerly the Research and Special Programs Administration (RSPA), under title 49 CFR 172.101. The FAA also regulates oxygen furnished by aircraft operators to passengers who have a medical need for oxygen on board the aircraft. Oxygen is highly regulated because, as an oxidizer, it can enhance an existing fire, and it can support combustion of certain flammable materials, whether or not an ignition source is present. The FAA's medical oxygen regulations, 14 CFR 121.574, 125.219, and 135.91, currently allow aircraft operators to furnish equipment for the storage, generation, or dispensing of oxygen to passengers provided all of the following conditions are met:

The equipment is:

1. Furnished by the certificate holder;
2. Of an approved type or is in conformity with the manufacturing, packaging, marking, labelling and maintenance requirements of 49 CFR parts 171, 172 and 173 except 173.24(a)(1);
3. Maintained by the aircraft operator in accordance with an approved maintenance program;
4. Free of flammable contaminants on all exterior surfaces;
5. Capable of providing a minimum mass flow of oxygen to the user of four liters per minute (this provision is not contained in either part 125 or 135 regulations);
6. Constructed so that all valves, fittings and gauges are protected from damage; and
7. Appropriately secured.

Recently new medical oxygen technologies have been approved by the Food and Drug Administration that reduce the risks typically associated with compressed oxygen. Two companies—AirSep Corporation and Inogen, Inc.—have developed small POCs that work by filtering out nitrogen from the air and providing the user with oxygen at a concentration of about 90%. The POCs operate using either rechargeable batteries or, if approved by the FAA, aircraft electrical power.

In addition, PHMSA, formerly RSPA, has determined that the POCs are not hazardous materials. Thus they do not require the same level of special handling as compressed oxygen, and are safe for use onboard aircraft provided certain conditions for their use are met.

*Summary*

This SFAR establishes requirements applicable to passenger-supplied POCs used on aircraft. With the adoption of this rule, passengers will be able to choose between two different kinds of

portable oxygen concentrator (POC) devices to operate onboard an aircraft during travel. The NPRM published in July 2004 explained the proposal and this final rule adopts much of that original proposal, with some modifications, including:

1. Some proposed requirements that would have been placed on air carriers are now the responsibility of the POC user;

2. The Inogen One POC, mentioned only as being studied in the NPRM, is included as an eligible portable electronic device in the SFAR in response to comments;

3. We will allow passengers using a POC to walk around the cabin while carrying the device. However, when a passenger has a medical need to use a POC during movement on the surface, takeoff, and landing, the person using the POC must be seated in seat location so as not to restrict other passenger's access to, or use of, any required emergency, or regular exit. Additionally, the POC user must be seated in a location so as not to restrict access to the aisle(s) of the passenger compartment. Passengers who do not have a medical need to use a POC during movement on the surface, takeoff and landing, and are not seated in accordance with the preceding requirements, must properly stow the POC so it does not block access to the aisleway (*e.g.*, under the passenger seat in front of the user). In either case, POCs and the extra batteries needed to power them must be properly stowed in accordance with the applicable carry-on baggage requirements of 14 CFR 91.523, 91.525, 121.285, 121.589, 125.183, and 135.87.

4. Several extra batteries may be required to power the POCs for some flights and we are including a battery-packaging standard for POC batteries included in carry-on baggage. (Section 3(b)(6) of the SFAR)

We don't feel that any of these modifications go outside the scope of the original NPRM since we specifically cited the Inogen One POC and sought comment on who should be responsible for certain aspects of the rule. All comments are addressed below.

The SFAR is an enabling rule, which means that no aircraft operator is required to allow passengers to operate these devices onboard, but they may allow them to be operated onboard. If an aircraft operator chooses to allow a passenger to operate these devices onboard the aircraft operator's aircraft the conditions in the SFAR must be met.

Presently, there are only two acceptable POCs on the market (Inogen and Airsep) and we cannot predict how future products may be developed and work. Accordingly, while we are committed to developing a performance-based standard for all future POC devices, we do not want to prematurely develop standards that have the effect of stifling new technology of which we are unaware. It is only under exceptionally rare circumstances that the FAA would permit a specific product to be used in a regulation. However, we believe such an approach is appropriate in this case until such time that a performance-based standard can be developed because the rule accommodates individuals who would otherwise be unable to fly. This approach is consistent with the Department of Transportation's desire to reduce travel barriers to persons with disabilities.

*Reference Material*

After reviewing the, ''United Kingdom Civil Aviation Authority study titled ''Dealing With In-Flight Lithium Battery Fires in Portable Electronic Devices'', and recent incident data detailing battery abuse and short circuit problems associated with the carriage of batteries, it became clear that we must provide a means for reducing the hazard of personal injury and fire from loose POC batteries included as carry on items in passengers' carry-on baggage. Although most battery pack manufacturers employ various protective devices to prevent abuse such as thermal or pressure disconnects and shutdown separators to prevent battery overheating and fires, abuse conditions such as physical damage to the cell(s) or external short circuits do occur. Abuse of the battery can cause those safeguards to become ineffective unless other protective measures, such as battery outer protective packaging, are used. (See the discussion under the subtopic heading ''Safety of Carrying Multiple Batteries'' under the main topic heading ''Discussion of Comments'' below).

*Related Activity*

The FAA's Office of Security and Hazardous Materials is coordinating with the Office of Hazardous Materials Safety in the DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) to examine battery safety. More specifically, PHMSA is considering a rulemaking that is aimed at preventing short circuit, sparking, and heat from all batteries and battery-powered devices in transportation. No formal or official rulemaking has begun at the time this SFAR is being published.

*Discussion of Comments*

The NPRM leading to this final rule was published in the **Federal Register** on July 14, 2004. We set a 30-day comment period ending on August 13, 2004. The Air Transport Association (ATA) requested that we extend the comment period for an additional 60 days to allow more time to examine the proposal and submit appropriate comment. After reviewing the ATA's request, we determined that they misunderstood the proposal and that such a significant extension would unnecessarily delay the final decision on this rule. We extended the comment period an additional 15 days to allow additional time to review and analyse the proposal.

The new comment period closed on August 30, 2004. As of September 8, 2004, we had received about 2,270 comments. All comments submitted after the comment period closing date were considered in this final rule.

Support for this proposed SFAR was overwhelming. Of the 2,270 comments, 2,267 favored at least the spirit of our proposal. Commenters had many substantive and helpful comments that suggested changes to our original proposal. Many of the comments were used to draft our Final Rule, a product that benefits greatly from the thought and detail put into the comments.

A large majority of the comments in favor of our proposal were form letters organized by a number of interest groups supporting the SFAR. We also received approximately 40 letters with extensive substantive comments, including questions, comments, suggestions, and ideas. We are responding to both the suggestions found in the form letters, as well as the ideas and suggestions found in the 40 letters with extensive substantive comments.

We asked for comments on the following questions in the NPRM:

1. Should the aircraft operator be required to inform the user about the availability of electrical outlets suitable for the Airsep portable oxygen concentrator?

2. Should the user be required to carry batteries for the duration of the flight including reasonable delays if there are electrical outlets available on the flight?

3. Are the meanings of the terms ''anticipated delay'' and ''reasonable delay'' sufficiently clear?

**Question 1. Use of Electrical Power**

Potential travellers commented in support of the aircraft operator informing the travelling public of the availability of electrical outlets on board

aircraft. Potential travellers requiring oxygen therapy stated that other passengers routinely plug a laptop computer or other entertainment device into the aircraft's power supply, so a POC user should be given the same opportunity. Some commenters feel that a POC user should be given priority over all users of other types of portable electronic equipment.

In contrast, industry and air carrier comments (including American Trans Air and the Air Transport Association) strongly objected to informing passengers of the availability of electrical outlets to power a POC. These commenters stated that electrical outlets are not widely available on the aircraft and that a carrier cannot guarantee access to an outlet because outlets may not be available for a particular seat assignment or, aircraft without outlets may be substituted unexpectedly for aircraft with outlets. Additionally, these commenters noted that some electrical outlets are designed to shut off automatically if the aircraft experiences electrical overload conditions. Any of these scenarios would create a problem for a POC user that had planned on using the aircraft's electrical supply and had not brought an appropriate number of batteries. American Trans Air was concerned with passengers being allowed to plug anything into the ship's power because it could open a ''Pandora's Box.''

*FAA Response:* The FAA agrees that if aircraft operators obtain FAA authorization, access to the electrical power supply of the aircraft can be made available for a POC user, but it is not requiring the operator to inform the passenger about the availability of electrical outlets. There are too many variables that may change before the flight that could affect the availability of electrical outlets. If carriers wish to provide such information to potential POC users it is their choice to do so. The FAA does not have the authority under the Air Carrier Access Act to require such an action.

If, for example, an operator of a transport category airplane provides a passenger access to aircraft electrical power for use with a POC, the operator must ensure that the installation and cabling, up to the point where the passenger plugs in the POC, meets the airworthiness standards of 14 CFR 25.1301, 25.1309, 25.1353, and 25.1357. These sections ensure that the wiring and circuit protection are sufficient for the intended use. The sections also ensure that the POC will not negatively affect aircraft power.

In regard to the issue about giving POC users priority to use any available electrical outlets over people who are not using POCs, the Department of Transportation (DOT), under the Air Carrier Access Act, would have to assess whether the law requires a POC user to have such priority access.

**Question 2 and 3. Number of Batteries in Carry-on To Address Anticipated or Reasonable Delay**

In the NPRM we asked whether the user should be required to carry batteries for the duration of the flight, including enough to cover reasonable delays if there are electrical outlets available on the flight. We also asked whether the terms ''anticipated delay'' and ''reasonable delay'' were sufficiently clear to a user to enable them to make the decision as to how many batteries would be needed.

Most commenters felt that those terms were not sufficient to determine the number of batteries that would be necessary in the event of any type of delay. Some suggested we simply require enough batteries to cover 150% of the flight time. Airbus commented that the user should be responsible for carrying the appropriate number of batteries to cover for delays, even if there are electrical outlets available on the aircraft. Airbus specifically notes that the outlets can only serve as backup for the devices under certain conditions because they will not always be available, and can be limited in power rating (typically around 75 Watts).

*FAA Response:* The FAA does not believe that simply adding 150% to the scheduled flight time is adequate to cover the number of batteries that may be needed by an oxygen dependent passenger. Flight time in the Official Airline Guides, for example, only accounts for the usual time between aircraft pushback at the departure airport gate and the aircraft's arrival at the gate at the destination airport. It does not account for delays that occur after passengers are boarded at the departure gate; after pushback from the departure gate but before takeoff; during in-flight holding at the arrival airport awaiting landing clearance; as a result of flight to a diversion airport due to either adverse weather conditions at the planned destination airport or an aircraft emergency; and after landing at the planned destination airport. Scheduled travel time then would not appear, in our eyes, to account for all contingencies during travel. For example, time spent on the ground prior to departure and while awaiting arrival at a gate can easily exceed an hour. Weather delays commonly exceed an hour if the weather conditions at the departure or planned destination airports cause air traffic instrument flight rules aircraft separation criteria to be increased at peak airport departure and arrival times. Under the 150% flight time increase comment, a 2 hour flight would only require enough batteries to power the POC for 3 hours. Under that scenario, a weather delay of an hour coupled with normal ground time, could easily drain the battery power before the trip was completed.

The passenger's physician can help the passenger determine how much oxygen the patient may need on a flight. The physician, in the physician statement, can note whether the passenger needs oxygen for the entire air travel time, including ground and in-flight delays, or only portions of those times. It is then up to the user to carry the number of extra batteries necessary to cover the possible contingencies.

**Generic Standard or Manufacturer Specific**

Many commenters, including Inogen, Inc., the Paralyzed Veterans of America, National Home Oxygen Patients Association, and the American Thoracic Society, requested that we not limit POCs by specific brand or manufacturer. These commenters wanted a generic standard that would apply to different types of devices. Over 150 commenters, however, asked that if we did limit the POC by manufacturer we include the Inogen One POC in the SFAR. Overall, there was broad support for writing a rule that would provide standards for a manufacturer to meet in order to have an acceptable model of POC.

*FAA Response:* As noted in the NPRM, the FAA was reviewing the Inogen One POC and accompanying material at the time of the NPRM's publication. The FAA's review and evaluation had to be completed prior to determining whether the Inogen One POC would be eligible to be operated as a POC, as well as a portable electronic device for use onboard aircraft. Since the issuance of the NPRM, we have completed our review of the Inogen POC and we agree with commenters that the Inogen One device is functionally similar to the AirSep POC and should be included in the Final Rule. The FAA has determined that this device may be operated onboard aircraft, subject to certain conditions in the regulation, and the SFAR will include this device along with the Airsep Lifestyle POC.

We agree that future rulemaking should include generic standards that future POC's would be required to meet. Since this future rulemaking will require time to develop the standards, the FAA will proceed, in the interim, with this SFAR. This SFAR is the

quickest way to enable the use of these two devices by passengers who have a medical need to continue to receive oxygen therapy during their air travel. The FAA will create a generic standard for all POCs that will be the basis for a follow-on rulemaking that will amend 14 CFR permanently. This SFAR is intended to be the first step in allowing passenger-furnished POC devices to be used on aircraft.

**Role of FAA and RSPA (Now PHMSA) in Determining a Material ''Hazardous''**

Several commenters asked specifically about a statement we included in the NPRM that pertained to the review and approval process for devices that may be considered non-hazardous by RSPA (now PHMSA) and whether or not the FAA can overrule PHMSA on such a determination.

*FAA Response:* The two steps in the process, while related, are not exclusively connected to one another. A PHMSA determination that a medical oxygen device is not regulated as a hazardous material does not automatically qualify such a device as safe for use in air commerce. The FAA also must review and evaluate the device to determine if there are any additional safety concerns pertaining to the use of the product on board an aircraft. A ruling by the FAA that such a device cannot be carried on board an aircraft, however, does not mean that the device is a hazardous material under PHMSA's regulations in Title 49.

**Requiring Airlines To Permit the Use of POCs**

Another commenter requested that we ''require'' aircraft operators to allow passengers needing oxygen therapy to carry on and operate the POCs onboard aircraft. The NPRM only stated that operators may choose to allow passengers on oxygen therapy to carry on and operate the devices onboard their aircraft.

*FAA Response:* The FAA does not have the statutory authority under the Air Carrier Access Act to require air carriers to allow these devices to be carried or operated onboard their aircraft. That authority is granted only to the Department of Transportation (DOT). It is DOT's decision whether or not to designate these devices as assistive devices, and to require air carriers to allow the transport of these devices and, in conjunction with the FAA, require air carriers to allow passenger operation of these devices onboard aircraft. This SFAR will open the door for air carriers to take advantage of the new market available through passenger use of these devices.

**Use of POCs During Takeoff and Landing and Passenger Movement in Flight**

Commenters wanted to make sure that our rule allowed passengers using a POC to operate the device for the entirety of the flight if necessary. Many oxygen users' physicians may stipulate that there is a medical need for their patients to use a POC during the entire flight, including movement on the surface, takeoff, and landing. Movement on the surface, takeoff, and landing are times when the current regulations require that, among other things, medical oxygen equipment be properly stowed, and each person using the equipment to be seated at a seat location that does not restrict passenger access to, or use of, any required exit (emergency or regular), or the aisle(s) in the passenger compartment.

*FAA Response:* This final rule will allow passengers to use a POC during the flight, including movement on the surface, takeoff, and landing. Additionally, once passengers are allowed to move about the cabin of the aircraft, they will be allowed to carry a POC along with them. This allowance is specifically cited in the new Section 3(a)(6) in the regulatory text of this final rule.

A new section was also included in the regulatory text that requires the physician statement to include information on the extent to which the user must use the portable oxygen concentrator (*e.g.*, During takeoff and landing only, during the whole flight, only when needed, etc.)

**Safety of Carrying Multiple Batteries**

One commenter raised concerns about the safety of carrying multiple extra batteries in carry-on baggage to be used to power the POC.

*FAA response:* This commenter's concerns are shared by the FAA. We are adopting the requirement that passengers whose physician statement stipulates a medical need for extensive oxygen use must carry enough extra batteries to power the POC for the duration of time the passenger may be on board the aircraft.

Comments received in response to the NPRM stated that the battery life for the AirSep Lifestyle POC is approximately 50 minutes, while the Inogen One has a battery life of approximately 2 to 3 hours. Since the battery life for these devices is so short, it is likely that passengers using these devices may have to carry many extra batteries onboard the aircraft in order to comply with their physician's oxygen prescription. The number of extra batteries must be able to power the POC in the event the aircraft operator does not permit these devices to be powered by the aircraft electrical system, or the aircraft electrical system is inoperative or otherwise unusable.

Therefore, the FAA is including a new section in the SFAR. Section 3(b)(6) requires the user to ensure that all POC batteries carried onboard aircraft as carry-on baggage are protected from short-circuit problems, and are packaged in a manner that protects them from physical damage. Protection from short-circuit problems may be provided by batteries designed with recessed battery terminals or by packaging that keeps the battery terminals from contacting metal objects (including the battery terminals of other batteries). When a battery-powered oxygen concentrator is carried onboard aircraft as carry-on baggage and is not intended to be used during flight, the battery must be removed and packaged separately, unless the concentrator contains at least two effective protective features to prevent accidental operation and battery overheating during transport.

The passenger will be responsible for ensuring that all extra batteries carried in carry-on baggage are properly packaged, but we do not envision passengers packaging the batteries themselves.

A POC manufacturer may not be able to develop a product to meet the packaging standard in this SFAR by the time the rule becomes effective (30 days after publication). However, the battery packaging standard contained in the regulatory language of this SFAR must be met before the extra batteries will be allowed as carry-on baggage onboard the aircraft. Companies with experience meeting shipping standards will likely be able to assist a passenger to meet this standard.

We believe passengers can also arrange for the following entities to package extra POC batteries to meet the standard:

—Homecare providers;
—Airlines;
—Other entities specializing in small package shipments.

As for the POC itself, we anticipate the homecare provider would be able to prepare the device for transport.

There is a history of battery problems with other portable electronic devices when a battery is being charged during flight. We currently do not have data to establish a limit on the recharging of POC batteries during flight. Therefore, if the aircraft electrical system is available to recharge a POC battery, it is currently permissible to do so under this SFAR.

In the future, the FAA may consider developing a technical standard order (TSO) to reduce the risk of overcharging for certain types of rechargeable batteries in portable electronic devices that are carried in the aircraft passenger compartment.

**Battery Backup for the POC in the Event of Failure**

Some comments we received asked what sort of contingency or emergency precautions would be taken if a POC were to fail during the flight, or if battery power ran out during the flight. The American Association for Respiratory Care suggested that, if a POC malfunctions, the flight crew should provide the user access to supplemental oxygen from the emergency oxygen source. The National Home Oxygen Patients Association also supports the idea of consulting with the patient if a POC fails, and relying on the emergency medical oxygen that would be available if an airline-provided oxygen system were to fail. Access to the aircraft's emergency oxygen would eliminate the need to divert the flight in many instances.

*FAA Response:* We agree that the appropriate action, in case of aircraft electrical power or battery failure, would be to refer to the passenger's physician statement and consult with the passenger using the POC. The crewmember should determine, through the statement and discussion, the person's medical need for oxygen use and provide access to the aircraft's first aid oxygen equipment if necessary. However, it should be noted that only aircraft required to be operated under 14 CFR part 121 are required to be equipped with first aid oxygen equipment. We do not feel it is necessary to include this particular detail in this SFAR, but strongly encourage the aircraft operator to make the availability of first aid oxygen equipment clear to the passengers who may have a medical need for it. We also encourage passengers who have a medical need for lengthy periods of oxygen use to ensure that this equipment is available before arranging for a flight.

**Application of RTCA/DO–160D, Section 21, Category M (Classified as a Medical-Portable Electronic Device)**

We received comments with concern to section 3(a)(1) of the proposed rule that required the aircraft operator to ensure that a POC does not interfere with electrical, navigation, or communication equipment on which the device is being used. Several commenters felt that this requirement may mean that each aircraft operator had to test each device for every model of aircraft they are flying to see if it is safe. For instance, as the joint comment headed by the American Thoracic Society noted, the requirement would seem to mean that if U.S. Airways tested the POC device on a Boeing 747 and found that there was no interference, Delta Airlines would still have to test the same device on the same model of aircraft for themselves. The Air Transport Association echoed the question, and sought some answers about whether or not the FAA's Advisory Circular (AC) 91.21–1A would be applicable to a POC. If the POC were tested to the standard established for a medical-portable oxygen device (M–PED) contained in RTCA Document DO–160D, would that be acceptable to meet the requirement of section 3(a)(1) of the SFAR?

*FAA Response:* A POC, whether it is the Inogen One or the AirSep Lifestyle, is considered a medical-portable electronic device (M–PED), and thus is eligible to meet the standards contained in RTCA DO–160D. Both devices fall under the scope of AC 91.21–1A, and each manufacturer can test their device to the standard called for in the AC. It must be clear though that the requirement found in section 3(a)(1) remains applicable to the aircraft operator. If a POC manufacturer tests the device to meet the RTCA standard and shows that it meets the standard, the manufacturer may provide the positive testing results to the aircraft operator on the POC itself. The aircraft operator will have to be able to show that the device has been tested and meets the applicable standard regardless of the test method used.

If either the Inogen or AirSep POC have been tested to meet the RTCA standard found in AC 91.21–1A, and the test results are provided to, and verified by, the aircraft operator, no further testing by the aircraft operator would be required.

**POC as Carry on Baggage**

We received comments from several interested parties, including the American Association for Respiratory Care, the American Thoracic Society, the Pulmonary Hypertension Association, and others that requested we allow passengers to bring two carry-on bags if they are using a POC on the flight. Their recommendation would not include the POC itself as one of those carry-on items, only the regular carry-on baggage common for most travellers, and the extra batteries that will be necessary for each flight.

*FAA Response:* The FAA does not agree with the recommendations of the commenters. Because aircraft operators' aircraft passenger compartment configurations have differing capability to accommodate the safe stowage of different sizes and amounts of carry-on baggage, the FAA cannot simply establish a requirement in its regulations that, henceforth, aircraft operators subject, for example to the requirements of 14 CFR 121.589, must allow POC users to bring into the passenger compartment, two carry-on bags and the extra POC batteries in addition to their POC. The FAA's regulations pertaining to the carriage of carry-on baggage in passenger compartments of aircraft, 14 CFR 91.523, 91.525, 121.285, 121.589, 125.183, and 135.87, provide that no aircraft operator may allow the carriage of carry-on baggage on its aircraft unless the applicable requirements prescribed by those regulations are met.

The FAA plans to provide information about the size and weight of the POCs covered by this SFAR to aircraft operators. This information may cause certain operators to review their carry-on baggage programs to determine whether they may be able to accommodate the carriage of the POCs.

**Liquid Oxygen Devices Onboard Aircraft**

We received several comments, mostly from individual commenters—not from industry or interest groups, asking why we couldn't also allow passengers to use the Helios liquid oxygen device, or other devices using a liquid oxygen supply.

*FAA Response:* Liquid oxygen is classified as a hazardous material by the Department of Transportation's hazardous materials regulations (49 CFR, parts 100–185). Paragraph 175.85(a) of 49 CFR prohibits passengers from carrying hazardous materials in the cabin of the aircraft. The Office of Hazardous Materials Safety of the U.S. DOT Pipeline and Hazardous Materials Safety Administration (PHMSA) is the responsible office for this regulation. Those seeking change to or relief from this regulation should address their concerns to PHMSA. At this writing, we are aware that the manufacturer of the Helios portable liquid oxygen device is seeking an exemption from PHMSA to allow passengers to carry on the Helios device on passenger-carrying aircraft. If PHMSA issues an exemption to its regulations, the manufacturer of the Helios device still would need to petition the FAA for an exemption to the SFAR, or for an amendment to the SFAR to permit the use of this liquid

oxygen device on board aircraft. Existing FAA regulations (e.g., Sections 121.574(a)(2); 125.219; 135.91) restrict the use of liquid oxygen to those devices furnished by the aircraft operator itself.

**Pilot in Command Notification**

We received a comment from the National Home Oxygen Patients Association that asked us to clarify the section in the NPRM that required the aircraft operator to ensure that the pilot in command be apprised of a passenger using a POC. This section, section 3(a)(10) in the NPRM, read, ''The pilot in command must be apprised when a passenger is using a portable oxygen concentrator.'' The comment asked if this meant that the pilot was to be informed when a passenger brought a POC onboard the aircraft and intended to use it during the flight, or if the pilot was to be informed specifically when a POC is turned on and off. The comment goes on further to question why it is necessary to inform the pilot that the device is onboard at all, and whether or not the physician letter required by the NPRM is an appropriate notification to the aircraft operator.

*FAA Response:* The intent of this section, now section 3(a)(5) in this final rule, is to make sure that the pilot in command is informed that a POC has been brought on the aircraft and the passenger's physician statement states that the passenger has a medical need for oxygen for a substantial portion of the duration of the flight. It is necessary for the pilot in command to know this information because of the possibility the device will fail and the user may have a medical emergency requiring emergency action on the part of the flight crew. Also, if a POC is using the electrical power of the aircraft as its main power source, the pilot will benefit from the knowledge and be able to announce and inform users if the use of that power needs to be restricted during the flight.

The physician's statement is appropriate to inform the aircraft operator that a passenger is carrying a POC onboard the aircraft with the intent to use it. The requirement found in section 3(a)(5) of this SFAR addresses only what the aircraft operator must do when allowing the POCs onboard for a flight.

**Ability To See and Hear a POC Alarm and React**

Some commenters, including the National Home Oxygen Patients Association, recommended that we require the physician to determine whether a user is able to see and/or hear the alarm on a POC and respond appropriately. Others asked, with reference to this requirement in the NPRM, how the aircraft operator could appropriately ensure that a passenger would be able to meet the requirement to see and hear the alarms. Aircraft operators opposed the requirement that they be responsible for assessing the ability of a passenger to see and hear an alarm and react appropriately because they felt their employees are not qualified to make such an assessment.

*FAA Response:* In the NPRM, we proposed that the aircraft operator be responsible for ensuring that the passenger using a POC onboard the aircraft could see or hear the alarm if it activated on the device, and be able to respond to the alarm appropriately. We agree with the industry comments that said this requirement was too difficult for the aircraft operator to implement. We also agree with the commenters that such an assessment is more appropriately completed by the prescribing physician. We also agree with the National Home Oxygen Patients Association, and others, that this statement must be part of the required information in the physician statement in section 3(b)(3) of this SFAR. In addition to the information added to the physician statement in section 3(b)(3), the proposed requirement in section 3(a)(3) is adopted with modification in section 3(b)(1) of this SFAR.

**Amend Proposal To Make Passenger Responsible for Complying With Certain Conditions**

In the NPRM, we outlined specific conditions that the aircraft operator would be responsible for in order to allow a passenger to carry on and operate a POC onboard the aircraft. We received several comments from air carriers and groups representing air carriers that objected to many of the responsibilities placed on them under section 3(a) in the NPRM. Specifically, there was objection to each of the following conditions under section 3(a) beginning with (a) 2: Section 3. Operating requirements—

(a) The AirSep Lifestyle Portable Oxygen Concentrator unit may be used by a passenger on board an aircraft provided the operator ensures that the following conditions are satisfied:

* * * * *

(2) The unit must be turned off if the nasal cannula is not positioned for oxygen delivery to the user;

(3) The user must be capable of seeing the alarm indicator lights, hearing the various warning alarms, and taking the appropriate action should the unit fail to detect the user's breathing or a general malfunction occurs, or is travelling with someone who is capable of performing those functions for the user;

* * * * *

(5) The air intake/gross particle filter or the air outlet must not be blocked during use;

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(8) The portable oxygen concentrator must be free from oil, grease, or other petroleum products and be in good condition free from damage or other signs of excessive wear or abuse;

(9) The number of hours before maintenance must be below 3,000 at the end of the scheduled flight time for that flight leg.

*FAA Response:* In response to comments, we are amending the requirements placed on the operator and, instead, placing these requirements on the passenger. As a result, we are removing the requirements on aircraft operators proposed in section 3(a)(2), (3), (5), (8), and (9), and transferring some of those conditions to the passenger outlined in section (3)(b). See the FAA's response under the topic heading ''Ability to see and hear a POC alarm and react'' as discussed above.

We have expanded the section that requires the passenger to carry a physician statement to clarify what needs to be included in the statement. We would also like to make it clear that a new physician statement will not be necessary for each flight a passenger takes. A single physician statement that includes all of the information required in section 3(b)(3) can be used for all future flights.

**Paperwork Reduction Act**

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new information collection requirements in this final rule to the Office of Management and Budget for its review. OMB approved the collection of this information and assigned OMB Control Number 2120–0702.

This final rule requires that if a passenger carries a POC on board the aircraft with the intent to use it during the flight, he or she must inform the pilot in command of that flight. Additionally, the passenger who plans to use the device must provide a written statement signed by a licensed physician that verifies the passenger's ability to operate the device, respond to any alarms, the extent to which the passenger must use the POC (all or a portion of the flight), and prescribes the maximum oxygen flow rate. Comments with respect to these two requirements

in the rule were received and addressed in the Discussion of Comments above.

We estimate that an average of 44,500 physician statements would be filed annually. It is estimated to take 5 minutes, or 0.083 hours, to complete each written statement. Hence, the estimated annual hour burden for the first year, and over the next ten years, are estimated to be:

*First Year:* 0.083 hours × 400,000 = 33,200 hours.

*Years 2–10:* 0.083 hours × 5,000 = 415 hours.

*Annual Hour Burden:* .083 × 44,500 = 3,693.5 hours.

The average loaded hourly wage for a physician is $65.32. Thus, the estimated average annual cost of obtaining a physician's statement is estimated to be:

*First Year:* $65.32 × 33,200 = $2,168,624.

*Years 2–10:* $65.32 × 415 = $27,108.

*Annual Cost Burden:* $65.32 × 3,693.5 = $241,259.

We estimate that in a typical year, passengers affected by this final rule would make about 1,690,000 flights per year. On each flight either a flight attendant or a gate agent would notify the pilot in command that a POC would be in use during flight. We estimate that it will take five minutes for the flight attendant or gate agent, to notify the pilot in command, and one minute for the pilot to record it.

*Annual Time for Flight Attendant/Gate Agent:* .083 × 1,690,000 = 140,270 hours.

*Annual Time for Pilot in Command:* .017 × 1,690,000 = 28,730 hours.

The average loaded hourly wage rate for a Flight Attendant/Gate Agent is estimated to be $23.97, and the average loaded hourly wage rate for a pilot in command is estimated to be $121.56.

*Annual Cost for Flight Attendant/Gate Agent:* $23.97 × 140,270 = $3,362,272.

*Annual Cost for Pilot in Command:* $121.56 × 28,730 = $3,492,419.

**Cost Summary**

In summary, this final rule is estimated to have a total hour burden of 2,135,000 hours, and estimated total costs of $70,959,901, which correlates to an estimated annual burden of 213,500 hours, and an estimated annual cost of $7,095,950.

SUMMARY OF PAPERWORK COSTS

| Action | Total hours | Total costs | Annual hours | Annual cost |
|---|---|---|---|---|
| Obtaining Physician's Statement | 36,935 | $2,412,594 | 3,693.5 | $241,259 |
| Notifying PIC | 1,690,000 | 68,546,907 | 169,000 | 6,854,691 |
| Totals | 1,726,935 | 70,959,501 | 172,693.5 | 7,095,950 |

Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB Control Number associated with this collection is 2120–0702.

**International Compatibility**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

**Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule: (1) Has benefits that justify its costs, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not affect international trade; and does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

**Costs and Benefits of the Rule**

The rule is estimated to cost about $79.9 million (or $58.1 million discounted) over the next ten years. The rule will also result in potential cost savings because passengers will have an option of using a POC onboard an airplane other than renting oxygen from the carrier.

**Who Will Be Potentially Affected by the Rule**

The rule will affect people who use POCs on airplanes.

**Our Cost Assumptions**

Covers the years 2006–2015.

All monetary values are expressed in 2004 dollars.

Discount rate—7%.

The packaging for batteries costs an average of $10, and holds up to 3 batteries.

Users of the AirSep POC will purchase three packages, and users of the Inogen POC will purchase one package.

Each effected passenger makes at least one round trip flight, per year, with at least one stop in each direction for a total of four separate flights.

**Final Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle,

the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule does not affect small businesses, since it does not require small entities to allow passengers to use POCs, rather it has a direct effect on individuals. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this final rule will not have a significant impact on a substantial number of small entities.

**International Trade Impact Assessment**

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the statute, the FAA has assessed the potential affect of this final rule and has determined that it will have only a domestic impact and therefore it will not affect on any trade-sensitive activity.

**Unfunded Mandates Reform Act Assessment**

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

**Executive Order 13132, Federalism**

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

**Environmental Analysis**

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312d and involves no extraordinary circumstances.

**Regulations That Significantly Affect Energy Supply, Distribution, or Use**

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

**List of Subjects**

*14 CFR Part 11*

Administrative practice and procedure, Reporting and recordkeeping requirements.

*14 CFR Part 121*

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation, Air taxis.

**The Amendment**

■ In consideration of the foregoing, the Federal Aviation Administration amends part 11 of Title 14, Code of Federal Regulations, of Title 14, Code of Federal Regulations, and adds SFAR No. 106 to Chapter II of Title 14, Code of Federal Regulations, as follows:

## PART 11—GENERAL RULEMAKING PROCEDURES

■ 1. The authority citation for part 11 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, and 46102.

## Subpart B—Paperwork Reduction Act Control Numbers

■ 2. Amend the table in § 11.201(b) by revising the entry for part 121 to read as follows:

**§ 11.201 Office of Management and Budget (OMB) control numbers assigned under the Paperwork Reduction Act.**

* * * * *

(b) * * *

| 14 CFR part or section identified and described | Current OMB Control No. |
|---|---|
| * * * * * * * | |
| Part 121 ..... | 2120–0008, 2120–0028, 2120–0535, 2120–0571, 2120–0600, 2120–0606, 2120–0614, 2120–0616, 2120–0631, 2120–0651, 2120–0653, 2120–0691, 2120–0702 |
| * * * * * * * | |

## PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 3. The authority citation for this SFAR shall read as follows:

**Authority:** 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 41721, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 4. Special Federal Aviation Regulation No. 106 is added to read as follows:

SPECIAL FEDERAL AVIATION REGULATON NO. 106. RULES FOR USE OF PORTABLE OXYGEN CONCENTRATOR SYSTEMS ON BOARD AIRCRAFT.

Section 1. *Applicability*—This rule prescribes special operating rules for the use of portable oxygen concentrator units on board civil aircraft. This rule applies to both the aircraft operator and the passenger using the portable oxygen concentrator on board the aircraft.

Section 2. *Definitions*—For the purposes of this SFAR the following definitions apply: Portable Oxygen Concentrator: means the AirSep Lifestyle or *Inogen One* Portable Oxygen Concentrator medical device units as long as those medical devices units: (1) Do not contain hazardous materials as determined by the Pipeline and Hazardous Materials Safety Administration; (2) are also regulated by the Food and Drug Administration; (3) provide oxygen therapy through pulse technology; and (4) assist a user of medical oxygen under a doctor's care. These units perform by separating oxygen from nitrogen and other gases contained in ambient air and dispensing it in concentrated form to the user.

Section 3. *Operating requirements*—

(a) No person may use and no aircraft operator may allow the use of any portable oxygen concentrator device, except the *AirSep LifeStyle* Portable Oxygen Concentrator and *Inogen One* Portable Oxygen Concentrator units. These units may be carried on and used by a passenger on board an aircraft provided the aircraft operator ensures that the following conditions are satisfied:

(1) The device does not cause interference with the electrical, navigation or communication equipment on the aircraft on which the device is to be used;

(2) No smoking or open flame is permitted within 10 feet of any seat row where a person is using a portable oxygen concentrator.

(3) During movement on the surface, takeoff, and landing, the unit must:

(i) Either be stowed under the seat in front of the user, or in another approved stowage location, so that it does not block the aisle way or the entryway into the row; or

(ii) If it is to be operated by the user, be used only at a seat location that does not restrict any passenger's access to, or use of, any required emergency or regular exit, or the aisle(s) in the passenger compartment;

(4) No person using a portable oxygen concentrator is permitted to sit in an exit row;

(5) The pilot in command must be apprised whenever a passenger brings and intends to use a portable oxygen concentrator on board the aircraft and the pilot in command must be informed about the contents of the physician's written statement (as required in Section 3(b)(3) of this SFAR), including the magnitude and nature of the passenger's oxygen needs.

(6) Whenever the pilot in command turns off the ''Fasten Seat Belt'' sign, or otherwise signifies that permission is granted to move about the passenger cabin, passengers operating their portable oxygen concentrator may continue to operate it while moving about the cabin.

(b) The user of the portable oxygen concentrator must comply with the following conditions to use the device on board the aircraft:

(1) The user must be capable of hearing the unit's alarms, seeing the alarm light indicators, and have the cognitive ability to take the appropriate action in response to the various caution and warning alarms and alarm light indicators, or be travelling with someone who is capable of performing those functions;

(2) The user must ensure that the portable oxygen concentrator is free of oil, grease or other petroleum products and is in good condition free from damage or other signs of excessive wear or abuse;

(3) The user must inform the aircraft operator that he or she intends to use a portable oxygen concentrator on board the aircraft and must allow the crew of the aircraft to review the contents of the physician's statement. The user must have a written statement, to be kept in that person's possession, signed by a licensed physician that:

(i) States whether the user of the device has the physical and cognitive ability to see, hear, and understand the device's aural and visual cautions and warnings and is able, without assistance, to take the appropriate action in response to those cautions and warnings;

(ii) States whether or not oxygen use is medically necessary for all or a portion of the duration of the trip; and

(iii) Specifies the maximum oxygen flow rate corresponding to the pressure in the cabin of the aircraft under normal operating conditions.

(4) Only lotions or salves that are oxygen approved may be used by persons using the portable oxygen concentrator device;

(5) The user, whose physician statement specifies the duration of oxygen use, must obtain from the aircraft operator, or by other means, the duration of the planned flight. The user must carry on the flight a sufficient number of batteries to power the device for the duration of the oxygen use specified in the user's physician statement, including a conservative estimate of any unanticipated delays; and

(6) The user must ensure that all portable oxygen concentrator batteries carried onboard the aircraft in carry-on baggage are protected from short circuit and are packaged in a manner that protects them from physical damage. Batteries protected from short circuit include: (1) Those designed with recessed battery terminals; or (2) those packaged so that the battery terminals do not contact metal objects (including the battery terminals of other batteries). When a battery-powered oxygen concentrator is carried onboard aircraft as carry-on baggage and is not intended to be used during the flight, the battery must be removed and packaged separately unless the concentrator contains at least two effective protective features to prevent accidental operation during transport.

Section 4. *Expiration Date*—This SFAR No. 106 will remain in effect until further notice.

* * * * *

Issued in Washington, DC, on July 1, 2005.

**Marion C. Blakey,**

*Administrator.*

[FR Doc. 05–13664 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–13–P**


Federal Register

**Tuesday,**
**July 12, 2005**

## Part IV

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Parts 21, 91, 121, 125, and 129**

**FAA Policy Statement: Safety—A Shared Responsibility—New Direction for Addressing Airworthiness Issues for Transport Airplanes; Fuel Tank Safety Compliance Extension and Aging Airplane Program Update; Final Rules**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 21**

**[Docket No. FAA–2004–17681]**

## FAA Policy Statement: Safety—A Shared Responsibility—New Direction for Addressing Airworthiness Issues for Transport Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Policy statement.

**SUMMARY:** This document sets forth the Federal Aviation Administration's (FAA) policy concerning the shared responsibility between design approval holders (DAHs) and operators in achieving certain types of safety objectives. It also provides guidance on the use of DAH requirements to support these safety objectives. This policy statement is intended to further clarify when and how the FAA will use DAH requirements in the future to address certain airworthiness issues for transport airplanes.

**DATES:** This policy is effective July 12, 2005.

**FOR FURTHER INFORMATION CONTACT:** Dionne Krebs, FAA, Transport Airplane Directorate, Aircraft Certification Service, ANM–110, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone: (425) 227–2250; fax: (425) 227–1320; e-mail: *Dionne.Krebs@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

As the FAA looks toward the future, we see a need for a new regulatory approach to addressing airworthiness issues in the existing fleet of transport airplanes. As the fleet ages and new designs become more technologically advanced, resolving emerging safety issues has become more complex. This complexity is compounded by the large number of airplanes in the existing fleet, with their many variations in configuration, and the varying kinds of operations authorized under the FAA's operational and flight rules. We are also finding that new technologies are now available, in some cases, to address safety issues that in the past could not be practically resolved.

In our effort to be more effective, we have reviewed our regulatory approach, as well as the performance of the affected aviation industry, in achieving national safety objectives. When the FAA determines that the level of safety for the existing fleet is unacceptable, we have two alternative courses of action:

- For those safety concerns related to a specific type of airplane model, the FAA declares an unsafe condition and requires actions through an airworthiness directive (AD) to achieve an acceptable level of safety.
- When establishing a new safety standard of general applicability (*e.g.*, all air carrier operations, large transport airplanes), the FAA issues general rulemaking that applies to future new designs, new production, the existing fleet (retrofit), or a combination of these, as appropriate.

We consider these two alternatives to be complementary tools. The appropriate alternative depends on the nature and extent of the safety issue. In either case, the FAA assesses the impact and solicits public comment on our proposed actions (except in emergency situations) before implementation.

When general rulemaking has been necessary to address fleet-wide safety issues, our practice has been to issue rules requiring action by the airplane operator. That practice relied on voluntary support from the design approval holders (DAH) to provide data and documents needed to support operator compliance. This approach has generally been successful. DAHs and operators have recognized they have a shared responsibility on certain safety issues, as reflected in the numerous rulemaking advisory committee recommendations transmitted to the FAA that affect continued airworthiness. However, this recognition did not necessarily ensure that information required by operators, such as service bulletins or maintenance or inspection procedures, would be provided in a timely manner.

On occasion, adopting airworthiness requirements only through operational rules has imposed an inappropriate burden on operators. In those cases, the expected support from the DAHs was not timely or consistent. Consequently some operators were unable to comply with the operational rule by the compliance deadline, or incurred substantial unexpected costs to comply. For example, in the program to reinforce flight deck doors, most operators had substantially less than the one year, that we originally anticipated as necessary, to modify their fleet. In the class D to class C cargo compartment conversion program, one type certificate holder did not develop the necessary modifications on time for operator compliance. Also, during this program a number of operators experienced frequent failures of modification parts, a lack of parts and a lack of technical support from several holders of supplemental type certificates.

The FAA concludes that, to achieve our safety objectives, DAHs and operators must have a shared responsibility on certain safety issues affecting the existing fleet. We also conclude, from reviews such as the Commercial Airplane Certification Process Study (March 2002), that we need to facilitate more effective communication of safety information between DAHs and operators. As both technology and airworthiness issues become more complex, certain fleet-wide safety issues require that the FAA take a new approach to facilitate their timely resolution. This new regulatory approach involves implementing complementary requirements for DAHs and operators, when appropriate. This approach was summarized in the Fuel Tank Safety Rule Compliance Extension and Aging Airplane Program Update published in the **Federal Register** on July 30, 2004 (69 FR 45936). We are publishing a document addressing the comments from that notice in this issue of the **Federal Register**.

### Policy Statement

Based on our evaluation of more effective regulatory approaches for certain types of safety initiatives and the comments received from the Aging Airplane Program Update (July 30, 2004), the FAA has concluded that we need to adopt a regulatory approach recognizing the shared responsibility between DAHs and operators.[1] When we decide that general rulemaking is needed to address an airworthiness issue, and believe the safety objective can only be fully achieved if the DAHs provide operators with the necessary information in a timely manner, we will propose requirements for the affected DAHs to provide that information by a certain date.

In applying this policy, we will consider the following factors when determining if DAH requirements are needed to support the safety objective:

- *The complexity of developing data and documents to address the safety issue:*[2] Type design data analysis is necessary for the timely, efficient development of necessary data and documents.
- *The need for FAA-approved service instructions to be available in a timely manner:* We need to be confident that when the required data and documents are provided, they will be acceptable,

[1] This policy will not affect the FAA's process for determining when and under what circumstance it is appropriate to issue ADs.

[2] This consideration will also address the potential for a readily identifiable third party to develop the complex data and documents in time to achieve compliance.

are available on time, and can be readily implemented by the operators to comply on large fleets of airplanes.

• *Whether a number of different types of transport airplanes need similar safety improvements:* Because the safety issue is common to many airplanes, we need to ensure that technical requirements and compliance process are consistent to ensure required safety level can be achieved equitably.

• *The safety objective needs to be maintained for the operational life of the airplane:* We need to ensure that future design changes do not degrade the achieved level of safety in the fleet.

• *Additional factors relevant to the safety objective being addressed:* There may be other factors that are unique to a particular safety concern that we also need to consider.

When the FAA takes this regulatory approach to implementing actions necessary for safety through complementary operational and DAH requirements, we will:

• Publish a notice of proposed rulemaking for public comment.

• Provide the rationale for adopting requirements for both the operators and DAHs.

• Identify the affected airplane models and types of operations.

• Define the specific information that must be developed and made available.

• Provide technical information in the rule when it is necessary for compliance.

• Identify processes and procedures for implementation of safety related actions.

• Specify the appropriate compliance times to allow for all of the design, certification, and implementation activity to occur.

• Consider the economic impacts to all affected parties and ensure that the safety benefits are sufficient to warrant the costs.

• Publish the proposed guidance materials associated with the safety initiatives concurrently with the rulemaking proposals, or as soon after as possible. This will enable industry to evaluate all of the related materials as soon as they are available and provide comprehensive comments to the FAA. For any materials that are not available during the comment period on the NPRM, we will provide a separate comment period for the proposed guidance.

• Identify training requirements.

• Seek information from industry to gain a full understanding of these considerations when developing our proposal.

This policy is based on the need to ensure there are acceptable data and documents available in a timely manner to support operator compliance with the related operational rules. The FAA understands that in some cases where airplane modifications are required, third parties may be able to offer engineering support for compliance with the operational rules. However, the FAA believes that requirements for DAHs may still be necessary because DAHs have all of the original data (analysis, models, test results, service experience, etc.) necessary to evaluate their current designs and develop modifications or programs that will enable them to show compliance in a timely way. In addition, these rules may also include production cut-in requirements, so DAHs would have to develop designs to comply with those requirements anyway.

This policy builds on current regulations (14 CFR 21.50 and 21.99) that require DAHs to ''make available'' certain service information that is necessary to maintain the airworthiness of airplanes. The FAA understands that data and documents, such as airplane maintenance manuals, structural repair manuals, service bulletins, etc., and support are part of some purchase contracts between DAHs and operators. In each case, the DAH would be required to ''make available'' the service information developed under a DAH requirement. Since current business relationships are structured to comply with this existing long-standing requirement, we do not anticipate any disruption in these relationships as a result of the DAH requirements. The requirement to ''make available'' does not preclude the DAH from charging for these data and documents.

In adopting this policy, we do not intend to limit the flexibility that a DAH has to contract with a third party to provide a means of compliance with a DAH requirement. This type of business arrangement has been used by DAHs to provide customer support for modifications associated with both required and voluntary configuration changes. If a DAH does rely on third parties, the DAH would still remain fully responsible for ultimate compliance with the requirement.

Under this policy, we will continue to the hold the affected operators responsible for implementing actions necessary for safety. In the event the DAH no longer exists and, therefore, cannot provide the required support, the operator still has the responsibility for complying with the operational rule on time. The operator must work to contract with a party capable of providing the needed support, or potentially remove airplanes from service.

Under this policy, we would not make DAHs responsible for addressing safety problems related to airplane configurations for which they are not the design approval holder. They would not be expected to provide data and documents related to modifications developed by third parties or operator-developed repairs and alterations. However, they may be required to provide guidance on how to assess the effects of those kinds of changes on the DAH's design.

Regulations applying this policy will contain additional features that will help ensure that the required safety related actions are acceptable and available on time for implementation by the operator. A requirement for compliance planning by the DAHs will be an integral part of this new approach to ensure that the DAH and the FAA have a common understanding of how the DAH intends to comply. The FAA is committed to assuring the proposed requirements of this new approach are complied with so that the safety objectives are achieved on time. This approach will also promote the development of consistent and standardized safety related actions.

As previously discussed, this policy statement is the cumulative result of past experience and in-depth reviews of past efforts to ensure the safety of the fleet through the certification and continued airworthiness processes. The FAA concludes that, under the circumstances described above, this new regulatory approach is necessary for safety and provides an efficient and cost effective strategy for addressing complex airworthiness issues in the future.

Issued in Washington, DC on July 6, 2005.

**Nicholas A. Sabatini,**

*Associate Administrator for Aviation Safety.*

[FR Doc. 05–13670 Filed 7–11–05; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 91, 121, 125, and 129**

**[Docket No. FAA–2004–17681; Amendment No. 91–283, 121–305, 125–46, 129–39]**

**RIN 2120–AI20**

## Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (Request for Comments)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Disposition of comments.

**SUMMARY:** On July 30, 2004, the FAA extended the date for operators to comply with the special maintenance program requirements for transport airplane fuel tank systems from December 6, 2004 to December 16, 2008. That final rule also included an overview of the findings of the FAA's review of our Aging Airplane Program and the rulemaking actions we plan as part of that program. As part of the final rule, the FAA sought comments on both the fuel tank safety compliance extension and the Aging Airplane Program update. This action is a summary and disposition of those comments received.

**ADDRESSES:** You can view the complete document for the final rule by going to *http://dms.dot.gov.* You can also go to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For the Fuel Tank Safety Compliance Extension: Mario L. Giordano, FAA, Aircraft Maintenance Division, Flight Standards Service, AFS–300, 800 Independence Avenue, SW., Washington DC 20591; telephone: (412) 262–9034 (x241); fax: (412) 264–9302, e-mail: *Mario.Giordano@faa.gov.* All other subjects: Dionne Krebs, FAA, Transport Airplane Directorate, Aircraft Certification Service, ANM–110, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone: (425) 227–2250; fax: (425) 227–1320; e-mail: *Dionne.Krebs@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

*General*

The FAA developed the Aging Airplane Program to address structural and non-structural system safety issues that may arise as airplanes age and in response to:

- Airplanes being operated beyond their original design service goals;
- The 1988 Aloha B737 accident; and
- The Aging Airplane Safety Act of 1991.

For purposes of the FAA's review of the Aging Airplane Program, the term ''Aging Airplane Program'' consists of the following rulemaking projects:

(1) The Enhanced Airworthiness Program for Airplane Systems;

(2) The Aging Airplane Safety Rule;

(3) The Widespread Fatigue Damage Program; and

(4) The Corrosion Prevention and Control Program.

In addition, the FAA also reviewed the operational rules of the Fuel Tank System Safety Rule (Final Rule), which was issued on April 19, 2001 in response to certain fuel tank system failures, including the 1996 TWA Flight 800 B747 accident. Since there are interactions between the operational rules of the Fuel Tank System Safety Rule and those Aging Airplane Programs being reviewed, we included it in the overall review of the Aging Airplane Program. Therefore, for purposes of the FAA's review of the Aging Airplane Program, the term ''Aging Airplane Program'' includes the Fuel Tank System Safety Rule.

*Aging Airplane Program Update*

The FAA recently performed a comprehensive review of the Aging Airplane Program. Based on this review, we decided that:

(1) We need to realign certain compliance dates in the existing rules and pending proposals to be more consistent; and

(2) We need to make certain substantive changes to the focus and direction of some of the individual rulemaking projects to ensure that these projects work together.

Therefore, the FAA has decided to revise the Aging Airplane Program accordingly and to align the compliance schedules as nearly as possible. You can find a detailed discussion about our review of the Aging Airplane Program and our conclusions for each of the programs within the Aging Airplane Program in that final rule entitled, ''Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (Request for Comments)'' (69 FR 45936, July 30, 2004).

Since the publication of Fuel Tank Safety Compliance Extension and Aging Airplane Program Update, the FAA has completed the following actions with regard to the Aging Airplane Program:

(1) On August 10, 2004, we issued a withdrawal notice for the Corrosion Prevention and Control Program Notice of Proposed Rulemaking;

(2) On October 6, 2004, we issued Policy Statement ANM112–05–00 for SFAR 88 (SFAR 88 Policy Statement); and

(3) On January 25, 2005, we issued the Aging Airplane Safety Rule (Final Rule).

*Fuel Tank Safety Compliance Extension*

During the Aging Airplane Program review, the FAA recognized that the Fuel Tank Safety Rule's compliance date of December 6, 2004 was a problem. The operators needed to start immediate action to meet the Fuel Tank System Safety Rule's requirements by this date but could not do so for several reasons (which we discuss in the Fuel Tank Safety Compliance Extension and Aging Airplane Program Update (Final Rule)). We took action to correct this by extending the compliance date from December 6, 2004 to December 16, 2008 in the Final Rule.

### Discussion of Comments

The docket received eleven comments in response to the Final Rule. Air Transport Association filed two separate comments. In addition, Airbus filed one comment and another comment is an FAA summary of telephone conversations between a representative of Airbus and the FAA. Those comments that address the compliance date extension were unanimously supportive. The FAA appreciates the support for its decision to extend the Fuel Tank Safety compliance date, and, after considering the comments, we will take no further rulemaking action with respect to this part of the Final Rule.

As for those comments about the Aging Airplane Program update, they generally support the Aging Airplane Program's safety objectives and alignment plan. They also request clarification on the specifics of the upcoming Aging Airplane Program rulemakings because the Final Rule did not contain details on these projects. For the most part, these comments have already been addressed in the SFAR 88 Policy Statement or will be addressed by the FAA in the context of the specific Aging Airplane Program rulemakings. However, the FAA received several lengthy comments about the proposed Design Approval Holder (DAH) requirements that merit independent discussion.

In the discussion below, the following applies:

(1) *Acronyms:*

(a) To identify the commenters, we use the following acronyms or abbreviated company names:

• Aerospace Industries Association and General Aviation. Manufacturers Association (AIA/GAMA).
• Air Transport Association (ATA).
• The Boeing Company (Boeing).
• Direction Générale de l'Aviation Civile (DGAC) of France.
• General Electric (GE).
• National Air Carrier Association (NACA).
• Transport Aircraft Technical Services Company, Inc. (TATSCI).

(b) Besides the commenter acronyms, we also use the following acronyms:
• Enhanced Airworthiness Program for Airplane Systems (EAPAS).
• Design Approval Holder (DAH).

(2) *Section References:* When addressing rule language, all section references will refer to Title 14 of the Code of the Federal Regulations, unless otherwise noted.

(3) *Definitions:*

(a) When referring to the FAA's review of the Aging Airplane Program, ''Aging Airplane Program'' means those rulemaking projects listed above in the ''General'' subsection of the ''Background'' section. When referring to the FAA's future plans for the Aging Airplane Program, ''Aging Airplane Program'' means the following rulemaking projects (this difference is based on the withdrawal of the Corrosion Prevention and Control Program on August 10, 2004):
• The Enhanced Airworthiness Program for Airplane Systems (Notice of Proposed Rulemaking in development);
• The Aging Airplane Safety Rule (Final Rule issued on January 25, 2005 and Notice of Proposed Rulemaking in development);
• The Widespread Fatigue Damage Program (Notice of Proposed Rulemaking in development); and
• The Fuel Tank System Safety Rule (Final Rule issued on April 19, 2001).

(b) ''Aging Airplane Program Update'' means that final rule entitled, ''Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (Request for Comments)'' (69 FR 45936, July 30, 2004).

(c) ''Design Approval Holders'' (''DAH'') means holders of type and supplemental type-certificates and other FAA design approvals.

(d) ''EAPAS'' means the Enhanced Airworthiness Program for Airplane Systems.

(e) ''Fuel Tank Safety Rule'' means that final rule entitled, ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001).

(f) ''DAH Policy Statement'' means that policy statement entitled ''FAA Policy Statement on New Direction for Addressing Airworthiness Issues for Transport Airplanes'' and published in the same **Federal Register** as this Disposition of Comments document.

(g) ''SFAR 88'' means that part of the Fuel Tank Safety Rule entitled ''Fuel Tank System Fault Tolerance Evaluation Requirements.''

**Response to Comments**

*Support for DAH Requirements*

ATA and NACA support the intent of the new approach to require DAHs to develop data and documents to support operator compliance with the related operational rules.

ATA notes that, historically, rules were adopted with compliance times only applicable to operators. At the time these rules were adopted, there were no compliant data, documents or parts available, and operators absorbed all the schedule risks associated with DAH activities. ATA terms these rules ''DCPI'' rules because the product must be designed, certificated, produced and installed within the compliance deadline mandated for operators. Operators can only perform installation after they receive a compliant product. ATA identified several examples of DCPI rules: B727 freighter conversion floor airworthiness directives (ADs), metallized Mylar ADs, B737 Rudder Power Control Unit ADs, and the Reinforced Flight Deck Door rule. For Reinforced Flight Deck Door rule, over half of the intended installation period had expired before the FAA approved the first of 22 designs necessary for ATA member airlines. This caused significant airplane availability and economic impacts. ATA believes the FAA's plans for the Aging Airplane Rules would be an appropriate and logical first step to avoid the pitfalls of DCPI rulemaking. ATA states that it is important for the FAA to ensure the compliance periods applicable to operators are planned realistically, effectively supported and reserved solely for the actions of the operators.

NACA also supports requiring DAHs to develop necessary data and continuing airworthiness documents required by operators.

*FAA Response:* The FAA appreciates the support for its proposed plans for the DAH requirements.

*Legal Authority—General*

Airbus does not believe the DAH requirements are necessary for safety in air commerce; therefore, Airbus believes the FAA does not have the legal authority to issue the proposed DAH requirements. Boeing concurs and believes the FAA must show that its regulations are ''necessary for safety'' to use the authority of 49 U.S.C. 44701(a)(5). Boeing believes there are various methods available for operators to meet their continued operational safety requirements, such as the use of third-party modifiers and engineering centers. Therefore, Boeing states the FAA must show that, in each case, the DAH requirements are ''necessary for safety.'' Boeing also questions if the FAA has the statutory right to add a requirement for DAHs to develop data and documents related to future FAA rulemakings as a condition of initial design approval or the continued holding of a design approval.

*FAA Response:* The FAA has full legal authority to issue the DAH requirements. This authority is derived from:

(1) 49 U.S.C. 44701(a)(5), which authorizes the Administrator to prescribe ''regulations and minimum standards for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security'';

(2) 49 U.S.C. 44717, which prescribes regulations that ensure the continuing airworthiness of aging airplanes;

(3) 49 U.S.C. 40113(a), which provides the Administrator with authority to prescribe regulations that she ''as appropriate, considers necessary to carry out this part''; and

(4) 49 U.S.C. 40101, which identifies the considerations for determining the public interest in carrying out the statute, including ''assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce.''

The commenters fail to recognize the broad discretion granted to the Administrator in making a finding that a regulation is ''necessary for safety.'' This finding is not just a factual finding; it is fundamentally a policy finding. In exercising her rulemaking authority, the Administrator must weigh all the options available and decide on the one that she finds most effective in achieving the desired regulatory objective. Her judgment in these matters would be subject to legal challenge only if the decision is ''arbitrary and capricious.''

We believe the DAH requirements are necessary to ensure proper and timely action to mitigate the identified safety concerns and we are acting under this broad authority in proposing them.

*Legal Authority—Source of Data*

Boeing and Airbus believe the FAA does not have the authority to specify the source of compliance data for other parties.

*FAA Response:* As the FAA discussed above in more detail, we have broad statutory authority to impose requirements we find necessary for safety. This includes requirements to ensure that at least one source of data is available to the operators for complying with operational rules that are necessary for safety, even though other sources may be available. The fact that there may be more than one way to fulfill a regulatory objective does not prevent us from adopting one way over another, as long as the method chosen by us is reasonable.

*Existing Practice Works Well*

Airbus states there is no need to mandate DAH requirements because the existing practice of issuing operational rules works well. Airbus believes that, for the most part, DAHs have always fully cooperated with the operators to develop and make available the necessary data in a timely manner.

Boeing agrees, believing that additional airworthiness requirements for raising the safety level for airplanes in-service belong in operational rules.

AIA/GAMA also agree, stating that the relationship between manufacturers and operators to support the continued airworthiness of airplanes is clearly effective based on the U.S. aviation safety record.

*FAA Response:* Historically, the FAA has worked with DAHs when safety issues arise to identify solutions and actions that need to be taken. This voluntary cooperative process has addressed some of these safety issues successfully.

However, recent discussions with various operators have confirmed that DAH support of operators for compliance with operational rules has occasionally been lacking. DAHs have not always developed and made available the service information needed for operators to modify airplanes or revise programs to comply with operational rules or airworthiness directives in a timely, efficient manner. This has resulted in delays in adopting corrective action. Some examples of programs in which some DAHs did not develop and make available the necessary information in a timely manner include:

(1) Thrust reversers, where it took 10 years to develop some service information for airworthiness directive related actions;

(2) Operators are still awaiting DAH action to assess repairs in certain Structural Repair Manuals for damage tolerance, even though the DAH committed to completing this activity by 1993;

(3) Class D to Class C Cargo Conversions, where one TC holder did not develop the necessary modifications in time to support operator compliance and where several operators were unable to obtain timely technical support and modification parts from STC holders; and

(4) The Reinforced Flight Deck Door Program, where most operators had substantially less than the 1-year compliance time originally anticipated because of delays in developing and certifying the new designs.

For the Aging Airplane Program rulemaking proposals, clearly operators will not be able to comply with several provisions of the operational rules without data and documents from DAHs. Since the Aging Airplane Program addresses several critical safety issues, the FAA believes that we cannot take the risk that this may be one of the occasions when DAH support is lacking. A regulatory approach will ensure the timely development of necessary service information to allow for the orderly and efficient implementation by operators. This will then result in a more uniform and speedy response to the safety issues covered by the Aging Airplane Program.

Therefore, the FAA believes DAH requirements are necessary to support the safety objectives of the Aging Airplane Program.

*Clarification on Use of DAH Requirements*

ATA, Boeing and AIA/GAMA ask the FAA to clarify the circumstances under which the FAA will use the DAH requirements and how the FAA will then apply these requirements.

AIA/GAMA believe the DAH requirements should be imposed only when necessary to address an unsafe condition and, then, only on a case-by-case basis. They also suggest the use of ATA's Spec 111, ''Airworthiness Concerns Coordination Process,'' or an equivalent, to ensure the FAA and affected operators and manufacturers work together to define the continued airworthiness issue to be addressed.

*FAA Response:* The DAH Policy Statement sets forth those factors the FAA will consider when determining if DAH requirements are needed to support a safety objective. We intend to use the DAH requirements to address ''airworthiness issues'' that are broad, fleet-wide safety issues. These issues would not relate to specific type designs. This rulemaking approach, when applicable, can provide for a more managed and less burdensome implementation of the safety initiative.

The individual Aging Airplane Program rulemakings will clearly describe the fleet-wide safety concerns and airworthiness issues that each rulemaking addresses. About the use of Spec 111 or an equivalent, the FAA agrees that DAHs should work closely with operators in complying with DAH requirements to ensure they adequately meet the operators' needs. We intend to work closely with industry to ensure compliance with the DAH requirements.

*Each DAH Requirement Should Be Issued as a Proposed Rule*

AIA/GAMA believe that each new DAH requirement should be issued as a proposed rule. This would ensure the appropriate due process and regulatory assessment necessary to determine the appropriateness and adequacy of the rule.

*FAA Response:* The DAH Policy Statement sets forth the actions the FAA will take to propose and then implement any DAH requirement.

*Approach Is Shift in FAA Regulatory Philosophy*

AIA/GAMA state the proposed DAH requirements represent a significant shift in the FAA's philosophy about the regulatory responsibility of manufacturers and operators for the continued airworthiness of airplanes. They also state that DAH requirements would force DAHs to comply with requirements other than those in effect at the time of the original certification of the airplane. This evolving set of requirements would introduce new challenges in production, certification, export, and commercial business relationships.

Boeing agrees, stating the DAH requirements would transfer some of the continued operation regulatory responsibilities from the operators to DAHs. In addition, the DAH requirements would cloud the responsibilities between DAHs and the operators.

*FAA Response:* Because the commenters do not yet have the specific details of each rulemaking initiative of the Aging Airplane Program, their concerns may be based on a mistaken assumption about the scope of the new DAH requirements. For the most part, these DAH requirements only require DAHs to develop documents that they have already agreed to develop.

The FAA does not believe the DAH requirements are a significant shift in our philosophy about the responsibility

of manufacturers and operators for the continued airworthiness of airplanes. Under current operational rules, operators always have final responsibility for maintaining their airplanes in a condition that allows for their continued safe operation. The DAH requirements do not affect this responsibility.

However, the operators are not solely responsible for the continued airworthiness of airplanes. The DAH requirements simply document in the regulations the existing non-regulatory shared responsibility that DAHs have acknowledged they have for continued airworthiness. DAHs will now be legally required to support their products by making available documents and data to the operators that they need to meet their airworthiness obligation.

Therefore, the complementary DAH and operator requirements of the Aging Airplane Program rulemaking proposals will clarify the airworthiness responsibilities between the operators and DAHs. In most cases, the DAH is required to develop and submit data and documents to the FAA for approval by a certain date. This will allow the operators enough time to use these data and documents to comply with the operational rules. The advantage of this approach over the past approach (that is, adopting only an operational requirement) is that everyone will clearly understand when the DAH data and documents are to be submitted for our approval. The specific rulemaking proposals and associated guidance material will also clarify what content and format these data or documents must be in and to whom the information must be submitted.

While we agree that this approach imposes new challenges on DAHs, they have already agreed to undertake most of these challenges voluntarily. The DAH requirements will simply ensure that they meet those challenges in time to assist the operators. We consider this necessary for safety.

*Conflict With Existing Regulations*

AIA/GAMA state there is a conflict with 14 CFR 21.99, which clearly states the continued airworthiness safety requirements for DAHs. Paragraph (a) requires the holder to make changes necessary to correct an unsafe condition. Paragraph (b) allows DAHs to make changes that will contribute to the safety of the product where there are no unsafe conditions. AIA/GAMA believe the new approach would require DAHs to make changes where there are no unsafe conditions to correct.

*FAA Response:* Although 14 CFR 21.99(b) allows design changes by the DAH to enhance safety, industry advisory committees, of which the commenters were participants, have recommended rule changes to require operators to take actions necessary for safety. For the Aging Airplane Program rulemakings, the FAA is requiring DAHs to develop data and documents to support operators in complying with these requirements. We do not believe this is a conflict with § 21.99. Instead, we believe it is an extension of our prior use of this section. Section 21.99 establishes the obligation for DAHs to develop data necessary to address unsafe conditions. These rules would extend that obligation to other circumstances where their support is necessary for safety.

*Non-Regulatory Solutions Should Be Pursued First*

Boeing believes the FAA should pursue non-regulatory solutions first. Boeing notes that there have been cases where the FAA has been unhappy with the time it took for DAHs to develop data and documents to assist the operators in meeting regulatory compliance dates. However, Boeing states that some of those problems were a result of unrealistically short compliance dates that did not consider other conflicting priorities. Boeing believes that mandating these unrealistically short dates will not solve the issues the FAA is trying to address. Boeing also states that the FAA does not consider the cumulative burdens of its rulemaking initiatives. Therefore, Boeing suggests the FAA should instead develop a process to more fully understand the time constraints associated with developing data and documents so they can establish more realistic compliance dates.

*FAA Response:* The FAA infers that Boeing believes the related operational rules are appropriate, but wants non-regulatory solutions for providing the data and documents to the operators so they can comply with the operational rules. The FAA understands Boeing's rationale to be that if the FAA identified realistic compliance times, then there would be no need for rules mandating development of the data and documents to support operator compliance. Therefore, the DAH requirements would be unnecessary.

For the Aging Airplane Program rulemaking proposals, operators will not be able to comply with several provisions of the operational rules without data and documents from DAHs. Since the Aging Airplane Program addresses several critical safety issues, the FAA believes that we cannot take the risk that this may be one of the occasions when DAH support is lacking. A regulatory approach will result in a more uniform and speedy response to the safety issues covered by the Aging Airplane Program. Therefore, the FAA believes DAH requirements are necessary to support the safety objectives of the Aging Airplane Program. In each of the specific Aging Airplane Program proposals, we will specify why we believe the DAH requirements are necessary.

The FAA does not agree that compliance times for rulemaking proposals have been unrealistic, in general. The FAA strives to identify the best times for compliance that assume sincere efforts from industry to comply with the requirements (for example, assigning satisfactory resources, working with the FAA to clarify compliance methods). When developing compliance times for rulemaking actions, we also consider industry input, both from advisory committees and comments received to rulemaking proposals.

For the Aging Airplane Program, the FAA has assessed the cumulative effect on industry of multiple regulatory actions. As discussed in the Aging Airplane Program Update, one of the goals of the FAA's review of the Aging Airplane Program was to identify how to most effectively align the rulemaking proposals to ensure there was no overlapping or redundant requirements. As a result of that review and in consideration of the cumulative impacts, we have proposed changes to the Aging Airplane Program based on the impact of multiple compliance dates and the demands placed on both DAHs and the operators.

*No Precedent for Placing a Regulatory Burden on DAHs*

Boeing believes the FAA has not placed an associated regulatory burden on DAHs when it previously issued retroactive safety standards.

*FAA Response:* When the FAA issued SFAR 88, we did place an associated regulatory burden on DAHs to support the operators' compliance with the fuel tank safety operational rules. Therefore, there is precedent for the proposed DAH requirements.

*Section 21.21 Excludes Compliance With Additional Airworthiness Requirements*

Boeing states that § 21.21 excludes compliance with any additional airworthiness requirements in the operational rules as a condition for issuance of a type-certificate or changed type-certificate approval.

*FAA Response:* The FAA does not agree that § 21.21 excludes compliance with additional airworthiness requirements. As stated above, we have the statutory authority to require actions of DAHs to ensure an acceptable safety level is maintained in the fleet. Sections 21.21 and 21.17 also allow for certain later amendments or regulations to be applied to design changes as appropriate.

*Reason for DAH Requirements*

Airbus and AIA/GAMA question the reasons that led to the development of the DAH requirements.

*FAA Response:* The DAH Policy Statement sets forth the reasons why the FAA believes the DAH requirements are necessary for the Aging Airplane Program rulemakings.

*Part 25—Support for Placement*

The FAA received several comments about the placement of the DAH requirements in part 25. While ATA supported this choice, other commenters objected to the use of part 25 and suggested the following alternatives: (1) Part 21 (Boeing, Airbus and AIA/GAMA), (2) a new SFAR (Boeing and AIA/GAMA) and (3) a new part (AIA/GAMA).

*FAA Response:* The FAA originally believed the proposed location of the DAH requirements in part 25 was a straightforward and effective means of ensuring that the data required to support compliance with the operational rules would be developed and provided to the operators. However, based on the comments received on the Aging Airplane Program Update and our own internal discussions on the subject, we now recognize that part 25 may not be the best location for the DAH requirements. In addition, in conversations with the other regulatory authorities, the FAA has become aware of some procedural difficulties these authorities may experience if certain DAH requirements are in part 25.

Since we have already developed the NPRMs for the Aging Airplane Program rulemakings, these NPRMs will likely identify part 25 as the location for the DAH requirements even though we are now considering other alternatives. As part of the public comment process for these rulemakings, we will seek input about alternative locations for the DAH requirements. We will make any appropriate changes when we develop the final rules. Each of the final individual Aging Airplane Program rulemakings will say where we will place the DAH requirements associated with that rulemaking, along with a justification for this choice.

*Part 25—''Retroactive'' Requirements*

GE is concerned that the FAA intends some future part 25 requirements to be ''retroactive.'' GE believes this is a major departure from established practice.

*FAA Response:* ''Retroactive'' regulations are not a new practice. In fact, we have already used part 25 for such a regulation when, in 1990, we added § 25.2 to part 25. This section contains special retroactive requirements for each applicant for a supplemental type-certificate (STC)(or an amendment to a type-certificate (ATC)), irrespective of the date of application. For example, affected STC or ATC applicants would need to comply with a requirement related to door locking mechanisms (§ 25.783(g)) in effect on October 25, 1967, even if the airplane was certified to earlier regulations. As discussed earlier, GE is correct that, regardless of location, we do intend to adopt requirements applicable to holders of existing design approvals. While these requirements may appear ''retroactive,'' they would require DAHs to take actions prospectively.

*Part 25—Potential Impact on Delivery Contracts*

Airbus states that placing the DAH requirements in part 25 could impact airplane delivery contracts because they commit DAHs to compliance with part 25.

*FAA Response:* Without access to the airplane delivery contract language referred to, the FAA cannot respond to Airbus' concern specifically. We have tried to structure the DAH requirements to mirror the existing requirements of §§ 21.50 and 21.99 for DAHs to ''make available'' certain documents. Contractual relationships between DAHs and operators already recognize this type of requirement. Using the same terminology, the DAH requirements will impose an obligation on DAHs to make certain data and documents available to the operators. However, as noted earlier, the placement of the DAH requirements is currently under review.

*Compliance—General*

Boeing, GE and AIA/GAMA raise several issues about compliance with the DAH requirements.

*FAA Response:* As stated in the DAH Policy Statement, whenever the FAA proposes and then issues a DAH requirement, we will clearly specify (1) what data, documents or action are required to comply with that DAH requirement, (2) the acceptable methods for attaining compliance, (3) who has the burden of compliance and (4) how compliance should be demonstrated to us.

*Compliance—Enforcement Policy*

Boeing, GE and AIA/GAMA ask the FAA to define its enforcement policy should it conclude a DAH has failed to comply with the DAH requirements.

*FAA Response:* The FAA's general enforcement policies, which are set forth in 14 CFR part 13 and FAA Order 2150.3, will apply to the DAH requirements. These general policies provide wide discretion for us to impose administrative action, fines (up to $25,000 per violation per day) or action against a DAH's certificate (including suspension or revocation). If a DAH is found to be non-compliant, we will consider the circumstances of non-compliance before determining an appropriate course of action. For example, deliberate violations will be treated more severely than inadvertent noncompliance. So, any enforcement action the FAA may choose to take will be in consideration of the circumstances of the violation and defined on a case-by-case basis.

*Compliance—Realistic Dates*

ATA states that it is important the FAA ensures compliance periods applicable to operators are planned realistically, effectively supported and reserved solely for the actions of the operators. ATA recommends that phased scheduling may be required in cases where the development of a product by a supplemental type-certificate (STC) holder cannot be accomplished or approved until the type-certificate (TC) holder develops a baseline. ATA believes this approach should allow the original DAH or an applicant to develop compliant solutions.

*FAA Response:* The FAA recognizes that compliance with the operational rules is dependent on FAA approved data being made available to operators in a timely manner. The primary objective of the proposed DAH requirements is to ensure that this data is developed and made available to operators in a timely manner.

The FAA is developing compliance dates that recognize the roles played by the various parties affected by the Aging Airplane Program rulemaking proposals and the fact that compliance can be dependent on the prior action of other parties. For example, for the DAH requirements, we will have separate compliance dates for DAHs and the operators, with reasonable gaps between these dates. We recognize that sometimes STC holder compliance will be dependent on information developed

by TC holders. In those cases, we will provide STC holders a suitable amount of time after TC holder compliance is required.

*Applicability—Non-Existent DAHs*

Boeing states the DAH requirements set an unbounded precedent to place regulatory burdens on the DAH for as long as a particular model is in operation, even after the DAH has ceased to exist.

Airbus and AIA/GAMA believe that it is inappropriate for the FAA to impose requirements on DAHs to support operators because this approach does not work for DAHs who are out of business or have surrendered their type-certificate.

*FAA Response:* The FAA expects that existing DAHs will support developing data related to their airplanes no longer in production if that model is still in operation. We do not believe that this obligation is a new precedent, as a continuing operational safety burden on DAHs and the operators already exists. Whether we address this burden via airworthiness directives or new rules is dependent on the urgency and scope of the safety issue and the ability to manage the safety risks. The rulemaking approach, when applicable, can provide for a more managed and less burdensome implementation of the safety initiative.

As for the comments about DAHs that no longer exist, while a technical obligation would be on that DAH to comply with the DAH requirements, there would be no means to enforce this obligation if the DAH no longer exists. In this case, the burden will fall on the operators of these airplanes to develop the data necessary to comply with the operational rules of the Aging Airplane Program rulemakings. To accomplish this, there may be some cases where operators may need to contract with a third party to develop and make this data available.

*Applicability—Affected Models*

Boeing, Airbus, GE and AIA/GAMA raise several comments about which airplanes the DAH requirements would apply to.

*FAA Response:* As stated in the DAH Policy Statement, whenever the FAA proposes and issues a DAH requirement, we will clearly specify in the applicable rulemaking which airplanes and the types of operations that the DAH requirement covers.

The commenters raise various issues that they believe we should consider before deciding which airplanes should be affected. These include fleet size, whether an airplane is still in production, and ''as-delivered'' versus ''in-service'' models. The DAH Policy Statement addresses some of these questions generally. We will consider issues like these in a specific context when determining the applicability of any DAH requirement.

*Applicability—Burden on Every DAH*

Boeing asks the FAA to place an appropriate burden on every DAH. Boeing goes on to state:

(1) The term DAH includes holders of type-certificates (TC), supplemental type-certificates (STC), technical service orders authorizations (TSO) and parts manufacturing authorizations (PMA). Boeing believes that if the approved designs are affected by an operational rule for which the FAA mandates DAH data and documents, the other DAHs should have similar mandates (not just the type-certificate holders).

(2) STC holders have essentially the same design and continued operational safety responsibilities as the TC holder. Furthermore, STC modifications can be very extensive (for example, adding cargo doors, converting airplanes from passenger to all-cargo configurations, upgrading cockpit designs).

(3) TSO holders alone possess the knowledge necessary to develop the data and reports for their FAA-approved products.

*FAA Response:* The FAA agrees that we must address the ''appropriate DAHs'' in each of the Aging Airplane Program rulemaking proposals. This is one reason we are using a regulatory approach, rather than relying on voluntary actions. Defining the ''appropriate DAHs'' is an issue-specific determination. For some of the safety initiatives, we will include STC as well as TC holders. However, since a TSO product becomes part of the TC for a specific airplane design, we do not anticipate addressing TSO holders separately from TC holders unless there are safety issues related to specific TSO articles.

As for PMA holders, they provide replacement or modification parts. For replacement parts, PMA parts would not have different considerations from TC holders' parts. The specific rulemaking proposals may address PMA modification parts. If the FAA determines it is appropriate to impact these DAHs in future rulemaking initiatives, we will define that in the specific rulemaking proposal.

*Applicability—Effect on TSO Holders*

Boeing believes the holder of a Technical Service Order Authorization (TSO) is also an equally affected DAH, and TSO requirements are not in part 25.

*FAA Response:* The FAA does not agree that a TSO holder is necessarily an equally affected DAH for purposes of DAH requirements. A TSO article becomes part of the type design of the affected product, and a TC applicant for a transport category airplane must show that its product meets all applicable part 25 standards, including those relevant to the TSO article. The issues addressed by the Aging Airplane Program's rulemaking proposals relate to structural and wiring integrity and do not affect TSOs directly. Therefore, these proposals will not consider TSO holders separately. In the future, if we decide that fleet-wide airworthiness issues do affect TSO articles, we would consider adopting DAH requirements that apply specifically to TSO authorization holders.

*Applicability—Impact on Small Businesses*

Airbus and AIA/GAMA believe the FAA should consider the impact to small businesses in its analysis of alternative approaches to achieving the rulemaking objectives. They each note that many of the supplemental type-certificate holders are small businesses that must be considered in the regulatory impact analyses, in accordance with the Regulatory Flexibility Act of 1980 (RFA).

*FAA Response:* The FAA recognizes that the RFA requires us to determine whether a rule will have a significant economic impact on a substantial number of small entities. When there is a significant economic impact on a substantial number of small entities, the RFA then requires us to consider alternative approaches to achieve the rulemaking objectives.

As part of each Aging Airplane Program rulemaking initiative, the FAA will perform a RFA analysis to determine the proposed rule's impact on small businesses and will proceed accordingly based on the results. Each of the Aging Airplane Program rulemaking proposals will contain a full discussion of this analysis and our findings. In addition, the public will have the opportunity to comment on this analysis and our findings.

*Source of Data—DAHs Versus Other Sources of Support*

Boeing and AIA/GAMA are concerned that the FAA does not state any intent to require operators to only use the data generated by DAHs. Boeing and Airbus also believe that it would be either inappropriate or unfair to impose requirements on DAHs when other

sources could offer the requisite support.

*FAA Response:* The FAA recognizes that DAHs may not be the only source of the data needed by the operators to meet their obligations under the Aging Airplane Program. If third parties can develop the required data or documents on their own, the FAA is not precluding their involvement in the process. If we required the use of DAH data only, we would be limiting the flexibility normally allowed operators and establish a monopoly in favor of DAHs. This would be an unacceptable outcome.

Furthermore, we believe DAHs should have an advantage over third parties. We base this on the fact that they have all the original data necessary to evaluate the current design and develop modifications or programs that will enable them to show compliance with the operational rules. Sometimes, only DAHs have the data necessary to develop the information needed for operator compliance. Third parties interested in offering competing solutions would need to get that data from DAHs through licensing agreements (which would likely involve compensation to DAHs). In both ARAC (for WFD) and ATSRAC (for EAPAS), DAHs have acknowledged that only they have the necessary data to develop the required programs (and they have agreed to do so). Therefore, in these areas, DAHs will be the only source of certain data and documents by default.

For DAH requirements that may involve development of design modifications, it is possible that third parties would be competitive with DAHs. But in some cases, these rules would also require that airplanes produced after a certain date incorporate the modification. So, DAHs would have to develop the modification for any model still in production. This would enable DAHs to amortize their development costs over a larger fleet. This would provide another competitive advantage over third parties, who could only amortize their costs over the existing fleet in need of retrofit.

The FAA recognizes there is a potential for third parties to also develop and make available some of the necessary support to the operators. However, we believe it is necessary to adopt DAH requirements to ensure the appropriate data is available in a timely manner for the operators to comply with the operational rules of the Aging Airplane Program.

If a DAH decides that third parties can provide a better market solution for compliance, the DAH requirements would not prohibit it from outsourcing the development of the data and documents. This is a common practice for DAHs in certification and has been used before to support other operational rules (for example, the reinforced flight deck door program).

*Guidance—Material Requested*

Boeing recommends that the FAA consider releasing policy and associated guidance material concurrent with, or within three months of, any future rules. Boeing also states that they would expect that any policy, guidance, schedule or penalty proposed by the FAA would include public review before implementation. ATA agrees, suggesting the FAA publish guidance material before, or concurrently with, the publication of the proposed and final rules.

*FAA Response:* As stated in the DAH Policy Statement, the FAA will publish guidance materials associated with the safety initiatives concurrently with the proposals, or shortly thereafter, so industry can evaluate all of the related materials and provide comprehensive comments to the FAA. For the Aging Airplane Program rulemaking proposals, the FAA intends to draft guidance materials for comment concurrently with the applicable notice of proposed rulemaking or as soon thereafter as possible. In addition, we also intend to publish the final guidance materials concurrently with the applicable final rules or as soon thereafter as possible.

*Effect on Business Arrangement Between DAHs and Operators*

Airbus, Boeing and AIA/GAMA state that it is inappropriate for the FAA to impose requirements on DAHs to support operators because these requirements have the possibility of changing the business relationship between operators and DAHs.

*FAA Response:* The FAA does not intend to adversely impact the business relationships between DAHs and the operators and we believe the proposed DAH requirements do not have this effect. In fact, we believe these requirements actually build on the existing relationship between operators and DAHs. However, since the commenters do not provide any justification or rationale for their belief, we cannot address their specific concern.

*Effect on the Legal Relationships for Product Liability*

AIA/GAMA state the DAH requirements proposal will have a substantial effect on the legal relationships between DAHs, suppliers and operators for product liability.

*FAA Response:* AIA/GAMA do not provide any justification or rationale for its statements that the DAH requirements will have a substantial effect on the legal relationships between DAHs, suppliers and operators for product liability. The FAA requests that AIA/GAMA provide additional information on this subject as part of its comments to any of the Aging Airplane Program rulemaking proposals so we can respond to AIA/GAMA's concerns.

*FAA Will Be Regulating Commercial Air Commerce Financial Interests*

Boeing believes the DAH requirements place the government in the position of regulating commercial air commerce financial interests, which was supposedly abandoned with deregulation.

*FAA Response:* The FAA does not agree that the proposed DAH requirements place the government in the position of regulating commercial air commerce financial interests. These rules will require DAHs to develop data and documents to be made available to the operators to support compliance with operational rules. The requirement for making data and documents available has a precedent in §§ 21.50 and 21.99, which do not regulate financial interests.

As we stated before, we recognize that other parties could offer support for compliance with the operational rules of the Aging Airplane Program. However, we cannot predict whether third parties will choose to participate in those areas where the operators need support to comply with those operational rules. Therefore, it is necessary to ensure there is at least one source of timely support. While third parties could support the operators, because DAHs hold all the underlying type design data, they are the appropriate ones to identify as the ultimate source of support.

*Need To Address Intent and Regulatory and Commercial Issues*

Boeing believes the FAA avoided any reference to DAHs providing the required data or documents to anyone. If the FAA decides DAHs must provide these items to the operators, Boeing contends the FAA must consider the significant additional regulatory and commercial issues associated with that choice and include them in the Aging Airplane Program rulemakings or guidance material.

*FAA Response:* It is the FAA's intent to require DAHs to develop the necessary data and documents and to make them available to the operators. In each of the individual Aging Airplane Program rulemaking proposals, we will

provide specifics about all aspects of the DAH requirements, including our reasons for decision to proceed with the DAH requirements and the regulatory and economic impact of our decision.

*Need To Address Problem and Safety Benefits*

Boeing believes the FAA must be clear about the exact problem it is trying to solve in the specific regulatory proposal and make the case that the proposed solution is necessary. In addition, Boeing believes the FAA must explain what safety benefits are derived from placing an additional regulatory burden on DAHs, separate from the benefits to be derived from placing a regulatory burden on the operators.

*FAA Response:* Each rulemaking initiative of the Aging Airplane Program will specify the exact safety issue being addressed and explain why the proposed solution is needed.

In addition, the FAA will evaluate the regulatory costs and benefits for each of the Aging Airplane Program's rulemaking proposals. We will present our findings in each proposal. However, without the transfer of the necessary data, analysis and documentation from DAHs to the operators, the safety benefit cannot be achieved. Thus, the anticipated benefit will be assessed for the DAH compliance actions and the operator compliance actions together.

*Need for Prior Meetings*

NACA recommends the FAA convene a meeting of an appropriate group of stakeholders to thoroughly air the issues associated with the DAH requirements before any final rule is issued.

AIA/GAMA state that industry does not have a clear enough understanding of the problem the FAA is trying to address through the DAH requirements. Therefore, AIA/GAMA propose the FAA hold a public workshop on this topic prior to moving ahead with such a significant and fundamental change to the existing regulations.

ATA also recommends the FAA consult with industry to avoid unintended consequences.

*FAA Response:* The FAA's intent in providing the Aging Airplane Program Update was twofold: (i) To provide a summary of the findings from our review of the Aging Airplane Program and (ii) to outline the rulemakings that we plan as a result of this review. It was always our intent to provide the specifics about these matters in the individual rulemaking proposals for the Aging Airplane Program. Therefore, we recognize there was not enough information in the Aging Airplane Program Update for industry to fully assess the impact of the DAH requirements. We believe that any confusion caused by this will be addressed after industry has had the opportunity to read each of the Aging Airplane Program rulemaking proposals. In addition, industry will have the opportunity to comment on each of the rulemaking proposals and we will review, consider and address any comments and/or consequences identified by industry that we have not anticipated.

As for the suggestion that the FAA hold a public meeting, we will determine if a meeting is necessary after the first notice of proposed rulemaking proposing DAH requirements is issued.

*Harmonization*

Airbus and AIA/GAMA request that the FAA harmonize their proposals with other aviation authorities.

*FAA Response:* The FAA has already discussed our plan for the Aging Airplane Program with management and specialists from EASA and Transport Canada. We have asked that they identify Aging Airplane Program rulemaking initiative points of contact so we can begin discussions with them about the Aging Airplane Program rulemaking proposals. As most of the technical aspects of the rules are based on recommendations from advisory committees, on which other authorities participated, many of the requirements should already be harmonized. We plan to work with the other authorities so our rulemaking plans for these initiatives will be harmonized to the greatest extent practicable.

*Uncertainty About Future Responsibilities of a DAH*

Boeing is concerned that if the FAA begins requiring changes to design approvals (certificates) for upgrades in safety, as opposed to declaring an unsafe condition, it creates significant uncertainty about future responsibilities of a DAH.

Boeing also believes the FAA has a long history of mandating changes to a type-certificate only when an unsafe condition exists. This has been done to bring the airworthiness of the airplane up to its certificated safety level and not because it wants to upgrade the safety level for in-service airplanes.

*FAA Response:* The FAA does not agree that requiring changes to design approvals for upgrades in safety, as opposed to declaring an unsafe condition, creates significant uncertainty about the future responsibilities of a DAH. The uncertainty of future actions necessary to maintain a certain safety level for the existing fleet is a reality for any regulated industry.

Whether we classify any particular safety issue as an ''unsafe condition'' and issue ADs on a model-by-model basis, or whether we address fleet-wide problems through general rulemaking, the issues being addressed were not anticipated by either the applicant or the FAA at the time of certification.

As the FAA becomes aware of safety issues in the fleet and determines that additional requirements are necessary to ensure an acceptable safety level, we work with industry to define appropriate actions. We adopt these actions only after we provide full notice and opportunity to comment (except for emergency actions). This situation is the same for the operators as well as DAHs.

*Effect on Type-Certificates*

Boeing believes that adding new requirements to an existing type-certificate (TC), as a condition of the continued validity of that TC, is the same as saying the old TC is invalid and a new TC must be issued. Boeing states that it appears the FAA wants to change its historical practice for DAHs by placing a continuing burden on them as a condition for continued validity of a design approval. Finally, Boeing maintains that any new requirement placed on a DAH would change the conditions under which that certificate remains valid, not because of an unsafe condition, but because the FAA wishes to raise the general level of safety of airplanes in service.

*FAA Response:* The FAA does not agree that adding new requirements for existing TC holders affects the validity of the TC. These requirements only mandate new actions by the TC holders. However, while the rule itself does not invalidate the TC, the FAA has the authority to suspend or revoke the TC if the TC holder violates the requirements and the FAA believes the violation warrants such action.

This is comparable to the situation for operators when we adopt an operational rule. In that case, imposing a new requirement on the operators does not ''invalidate'' their operating certificate. It simply imposes a new requirement on the certificate holder. However, failure to comply with the operational rules may subject an operator to FAA action against its certificate.

*Regulatory Analysis Should Separate Operator and DAH Cost/Benefits*

AIA/GAMA believe the operator and DAH must be considered independently in the cost/benefit analysis of the DAH requirements.

Boeing agrees, stating the FAA must perform a regulatory analysis each time the FAA places a burden on the DAH and this analysis should separate operator and DAH costs and benefits. Boeing also believes that since the FAA must define the cost burden and expected benefits associated with any particular rule, the FAA could not issue a single rule that automatically imposes a burden for undefined future operational rule changes. Finally, Boeing states the regulatory analysis must also consider alternative regulatory actions.

*FAA Response:* Each time the FAA proposes to adopt a DAH requirement, the FAA will conduct a regulatory analysis of the specific change. As is the case with all rulemaking proposals, the regulatory evaluations for each of the Aging Airplane Program rulemaking proposals will consider the costs and benefits for all affected parties and will address any alternative regulatory approaches that we considered.

Historically, when the FAA issued operational rules (without associated DAH requirements), we determined the costs the DAH would incur to support the initiative. Without the DAH support, operators may not be able to comply, in which case the anticipated safety benefits would not be achieved. So, this aspect was addressed in regulatory evaluations for operational rules even without the specific requirements for DAHs to develop the data or documents necessary for operator compliance. While we can identify the DAH and operator costs separately, the benefits are dependent on both actions and we will not estimate them separately.

*''Overwhelming'' Workload for FAA*

Airbus believes the workload created by enacting the DAH requirements would be overwhelming to the FAA. Airbus believes there is substantial training and documentation that would need to be developed to prepare the FAA for this activity. Airbus also states the requirement for the FAA to review and approve data submittals extends the time to achieve compliance by the operations.

*FAA Response:* Regardless of whether the FAA adopts DAH requirements, we would have a similar workload, as the design and program approvals would still be necessary. The DAH requirements provide advantages such as:

(1) Standardized application of guidance material;

(2) Compliance planning to streamline the coordination of the actions required of DAHs; and

(3) Specified compliance dates for DAHs.

These advantages reduce our workload and increase our efficiency because we have defined goals and objectives and means to ensure that DAHs are fulfilling them.

In addition, the FAA has tasked ARAC to develop recommendations for addressing certain issues and the necessary data for compliance. This will provide guidance for DAHs to develop standardized data. The associated ARAC/ASTRAC standardized approach should reduce the review time and workload.

As for training, the FAA intends to develop training to provide a better understanding of the technical and administrative requirements and processes associated with the Aging Airplane Program. We will make this training available to FAA employees, other aviation authorities and industry.

Finally, the compliance plan requirements of the proposed rules will address Airbus' concern about the timeliness of FAA approvals. This will ensure both the DAH and the FAA have a good understanding of the DAH's proposed compliance methods and deliverables. It will also provide for a means to monitor the compliance progress and provide a means for correction, if determined necessary before final submittal.

*May Force Retirement of Some Airplane Models*

Airbus notes the FAA's past approach to airworthiness issues placed the burden on the operator to make a decision whether or not to have the required analyses and data developed. Under the DAH requirement approach, Airbus believes that, if the operator and DAH cannot reach agreement on the economic terms of compliance, the operator would be forced to retire the airplane.

*FAA Response:* The cost recovery is a commercial issue between DAHs and operators. Each DAH is free to charge whatever the market will bear to recoup its costs associated with developing the data and documents required by the DAH requirements. Based on the amount of this DAH fee and the costs associated with complying with the operational rules, each operator will then have to make an economic decision as to whether these costs are offset by future revenue streams from a fleet of airplanes. The FAA recognizes that this decision may result in an operator deciding to retire certain airplanes rather than incur these costs.

**Miscellaneous Comments**

*Expansion of Aging Program to Non-Structure Related Parts of Airplanes*

DGAC would like the FAA to expand its aging activity to all systems that could be involved in hazardous or catastrophic failure. DGAC states that it has found it useful to perform an aging systems analysis on these systems for Airbus airplanes and believes that such an analysis would be of benefit to other transport category airplanes of similar design. DGAC believes the most satisfactory way to put such an activity into force is by updating the regulations by expanding their scope to the non-structure related parts of airplanes.

*FAA Response:* The FAA shares DGAC's concerns about the aging of all critical systems in airplanes. We will work closely with DGAC and other aviation authorities to develop harmonized approaches to resolving these aging issues.

Generally, we identify and address aging issues through the airworthiness directive process when appropriate. Under EAPAS, the FAA, JAA, Transport Canada and industry successfully identified and addressed the aging issues in airplane wiring interconnection systems. Also, to address specific items, we are proactively working with EASA, Transport Canada and DAHs to study and identify aging issues in mechanical systems. Our Aging Mechanical Systems Program consists of various projects, including:

(1) Testing single-element, dual-load path flight control linkages (a report has been completed and is available on request);

(2) An aging flight controls systems assessment to develop methods to study and assess the safety of mechanical systems (this assessment is in work); and

(3) A new 18-month study of emergency evacuation systems to evaluate current problems with aging operating emergency evacuation slides and doors (this study is expected to be completed in mid-2006).

Future work will focus on other aging mechanical systems including hydraulic lines and oxygen systems.

In addition, application of the new certification requirement for wiring systems will include airplane engine wiring. However, because of the rigorous maintenance requirements and procedures currently in place, we did not consider engines as part of the Aging Airplane Program. Therefore, we welcome any information that DGAC might have about aging issues for propulsion systems.

*Instructions for Continued Airworthiness*

TATSCI asks for an explanation of how the FAA would mandate operators of in-service aircraft, engines and propellers to comply with the current requirements for Instructions for Continued Airworthiness (ICA). TATSCI points out that most products certified before the ICA requirements existed do not have ICA.

*FAA Response:* Before the ICA requirements existed, § 25.1529 required type-certificate holders to provide maintenance manuals containing much of the information currently required in ICA. The primary difference is the current requirement for an airworthiness limitations section (ALS) as part of the ICA (and the corresponding operational rules that mandate compliance with the ALS requirement (for example, § 91.403(c))). In those DAH requirements that mandate revisions of the ALS, the FAA is proposing to require that type-certificate holders establish an ALS if they have not already done so.

**Conclusion**

After consideration of the comments submitted in response to the Final Rule, the FAA has determined that no further rulemaking action is necessary. Amendment Nos. 91–283, 121–305, 125–46 and 129–39 remain in effect as adopted.

Issued in Washington, DC, on July 6, 2005.

**Marion C. Blakey,**

*Administrator.*

[FR Doc. 05–13669 Filed 7–11–05; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
July 12, 2005

Part V

# The President

**Presidential Determination No. 2005–26 of July 4, 2005—Waiving Prohibition on United States Military Assistance With Respect to the Dominican Republic**

**Presidential Determination No. 2005–27 of July 4, 2005—Implementation of Sections 603 and 604 of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228)**

Federal Register
Vol. 70, No. 132
Tuesday, July 12, 2005

# Presidential Documents

**Title 3—**

## The President

**Presidential Determination No. 2005–26 of July 4, 2005**

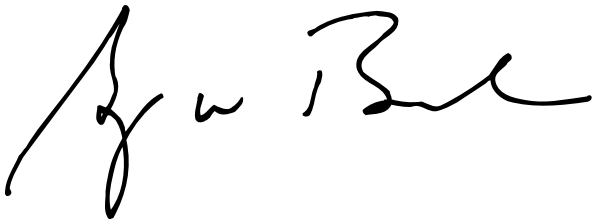
## Waiving Prohibition on United States Military Assistance with Respect to the Dominican Republic

**Memorandum for the Secretary of State**

Consistent with the authority vested in me by section 2007 of the American Servicemembers' Protection Act of 2002 (the ''Act''), title II of Public Law 107–206 (22 U.S.C. 7421 *et seq.*), I hereby:

- Determine that the Dominican Republic has entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against U.S. personnel present in such country; and
- Waive the prohibition of section 2007(a) of the Act with respect to this country for as long as such agreement remains in force.

You are authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
*Washington, July 4, 2005.*

[FR Doc. 05–13792
Filed 7–11–05; 8:45 am]
Billing code 4710–10–P

# Presidential Documents

**Presidential Determination No. 2005–27 of July 4, 2005**

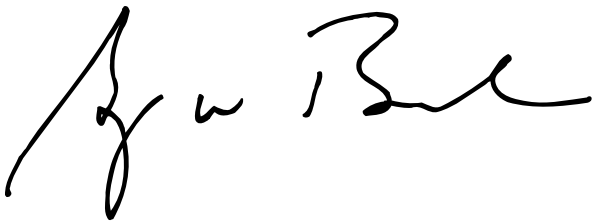
## Implementation of Sections 603 and 604 of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228)

**Memorandum for the Secretary of State**

Consistent with the authority contained in section 604 of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228) (the ''Act''), and with reference to the determinations set out in the report to Congress transmitted on the date hereof, pursuant to section 603 of that Act, regarding noncompliance by the PLO and the Palestinian Authority with certain commitments, I hereby impose the sanction set out in section 604(a)(2), ''Downgrade in Status of the PLO Office in the United States.'' This sanction is imposed for a period of 180 days from the date hereof or until such time as the next report required by section 603 of the Act is transmitted to the Congress, whichever is later. You are authorized and directed to transmit to the appropriate congressional committees the report described in section 603 of the Act.

Furthermore, I hereby determine that it is in the national security interest of the United States to waive that sanction, pursuant to section 604(c) of the Act. This waiver shall be effective for a period of 180 days from the date hereof or until such time as the next report required by section 603 of the Act is transmitted to the Congress, whichever is later.

You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
*Washington, July 4, 2005.*

[FR Doc. 05–13793
Filed 7–11–05; 8:45 am]
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## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT JULY 12, 2005

**COMMERCE DEPARTMENT**
**National Oceanic and Atmospheric Administration**
Fishery conservation and management:
Northeastern United States fisheries—
Georges Bank cod; published 7-12-05

**ENVIRONMENTAL PROTECTION AGENCY**
Air pollutants, hazardous; national emission standards:
Miscellaneous coating manufacturing; published 5-13-05
Pharmaceuticals production; published 5-13-05

**HEALTH AND HUMAN SERVICES DEPARTMENT**
**Food and Drug Administration**
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**HOMELAND SECURITY DEPARTMENT**
**Coast Guard**
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**STATE DEPARTMENT**
International Traffic in Arms Regulations:
Part 126; amendments; published 7-12-05

**TRANSPORTATION DEPARTMENT**
**Federal Aviation Administration**
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BAE Systems (Operations) Ltd.; published 6-7-05
Boeing; published 6-7-05
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Transport category airplanes—
Safety; shared responsibility; airworthiness issues policy statement; published 7-12-05

**TREASURY DEPARTMENT**
**Internal Revenue Service**
Income taxes:
C corporations converting to S corporations; LIFO recapture; published 7-12-05

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**
**Agricultural Marketing Service**
Cotton classing, testing and standards:
Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]
Milk marketing orders:
Appalachian and Southeast; comments due by 7-19-05; published 5-20-05 [FR 05-09962]

**AGRICULTURE DEPARTMENT**
**Animal and Plant Health Inspection Service**
Plant-related quarantine, foreign:
Wheat importation; flag smut-related prohibitions; proposed removal; comments due by 7-19-05; published 5-20-05 [FR 05-10094]

**AGRICULTURE DEPARTMENT**
**Commodity Credit Corporation**
Loan and purchase programs:
Extra long staple cotton; prices; comments due by 7-20-05; published 6-20-05 [FR 05-12034]

**AGRICULTURE DEPARTMENT**
**Natural Resources Conservation Service**
Reports and guidance documents; availability, etc.:
National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

**COMMERCE DEPARTMENT**
**National Oceanic and Atmospheric Administration**
Fishery conservation and management:
Northeastern United States fisheries—
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Marine mammals:
Commercial fishing authorizations; incidental taking—
Atlantic Large Whale Take Reduction Plan; comments due by 7-21-05; published 6-21-05 [FR 05-11847]

**COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA**
Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

**DEFENSE DEPARTMENT**
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Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

**EDUCATION DEPARTMENT**
Grants and cooperative agreements; availability, etc.:
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Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

**ENERGY DEPARTMENT**
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Environmental Management Site-Specific Advisory Board—
Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

**ENERGY DEPARTMENT**
**Energy Efficiency and Renewable Energy Office**
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Test procedures and efficiency standards—
Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

**ENERGY DEPARTMENT**
**Federal Energy Regulatory Commission**
Electric rate and corporate regulation filings:
Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

**ENVIRONMENTAL PROTECTION AGENCY**
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Preparation, adoption and submittal—
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Air quality implementation plans; approval and promulgation; various States:
Virginia; comments due by 7-20-05; published 6-20-05 [FR 05-12077]
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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Alternaria destruens Strain 059; comments due by 7-18-05; published 5-18-05 [FR 05-09903]
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Fludioxonil; comments due by 7-18-05; published 5-18-05 [FR 05-09778]
Pinene polymers; comments due by 7-18-05; published 5-18-05 [FR 05-09479]
Red cabbage color; comments due by 7-18-05; published 5-18-05 [FR 05-09482]
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National oil and hazardous substances contingency plan—
National priorities list update; comments due by 7-18-05; published 6-17-05 [FR 05-11827]
National priorities list update; comments due by 7-18-05; published 6-17-05 [FR 05-11828]
Water pollution control:
National Pollutant Discharge Elimination System—
Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]
Water pollution; effluent guidelines for point source categories:

Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

**FEDERAL COMMUNICATIONS COMMISSION**

Committees; establishment, renewal, termination, etc.:
Technological Advisory Council; Open for comments until further notice; published 3-18-05 [FR 05-05403]

Common carrier services:
Interconnection—
Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]
Local and interexchange carriers; minimum customer account record exchange obligations; comments due by 7-18-05; published 6-1-05 [FR 05-10973]

Radio stations; table of assignments:
Georgia; comments due by 7-18-05; published 6-8-05 [FR 05-11274]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Centers for Medicare & Medicaid Services**

Medicare:
Inpatient rehabilitation facility prospective payment system (2006 FY); update; comments due by 7-18-05; published 5-25-05 [FR 05-10264]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

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Vitamin D3; use in calcium-fortified fruit juices and juice drinks; comments due by 7-22-05; published 6-22-05 [FR 05-12322]

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Shell eggs; safe handling statements; comments due by 7-19-05; published 5-5-05 [FR 05-08907]
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Sprout safety; meeting; comments due by 7-18-05; published 4-22-05 [FR 05-08103]

Reports and guidance documents; availability, etc.:
Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]
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Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Fair housing:
State and local fair housing enforcement agencies; certification and funding; comments due by 7-18-05; published 5-18-05 [FR 05-09830]

**INTERIOR DEPARTMENT**

**Indian Affairs Bureau**

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Western Shoshone; comments due by 7-18-05; published 5-19-05 [FR 05-09941]

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

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Recovery plans—
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Endangered and threatened species:
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Southwestern willow flycatcher; comments due by 7-18-05; published 7-7-05 [FR 05-13402]
Vernal pool crustaceans and plants in California and Oregon; comments due by 7-20-05; published 6-30-05 [FR 05-12963]

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

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**MANAGEMENT AND BUDGET OFFICE**

**Federal Procurement Policy Office**

Acquisition regulations:
Cost Accounting Standards Board—
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**NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL**

National Fingerprint File Program:
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**NUCLEAR REGULATORY COMMISSION**

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Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

**SMALL BUSINESS ADMINISTRATION**

Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

**OFFICE OF UNITED STATES TRADE REPRESENTATIVE**

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Generalized System of Preferences:
2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

**TRANSPORTATION DEPARTMENT**

Economic regulations:
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**Federal Aviation Administration**

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Bell; comments due by 7-18-05; published 5-17-05 [FR 05-09762]
Boeing; comments due by 7-18-05; published 6-3-05 [FR 05-11049]
Bombardier; comments due by 7-18-05; published 5-17-05 [FR 05-09553]
Cessna Aircraft Co.; comments due by 7-19-05; published 5-19-05 [FR 05-09988]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 7-18-05; published 6-22-05 [FR 05-12314]
General Electric; comments due by 7-18-05; published 5-19-05 [FR 05-09887]
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Tiger Aircraft, LLC; comments due by 7-18-05; published 5-19-05 [FR 05-09974]
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Airworthiness standards:
Special conditions—
AMSAFE, Inc.; Adam Model A500; comments due by 7-21-05; published 6-21-05 [FR 05-12148]
Duncan Aviation Inc.; Raytheon 300 King Air airplane; comments due by 7-22-05; published 6-22-05 [FR 05-12363]

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Commercial space transportation:
Miscellaneous changes; comments due by 7-18-05; published 5-19-05 [FR 05-09705]

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

Motor vehicle safety standards:
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Attaching child restraints to the LATCH system for the suppression test; comments due by 7-18-05; published 5-19-05 [FR 05-09924]

**TRANSPORTATION DEPARTMENT**

**Pipeline and Hazardous Materials Safety Administration**

Hazardous materials transportation:

Infectious substances; United Nations recommendations harmonization; comments due by 7-18-05; published 5-19-05 [FR 05-09717]

**TREASURY DEPARTMENT**

**Alcohol and Tobacco Tax and Trade Bureau**

Alcohol; viticultural area designations:

Livermore Valley, Alameda County, CA; comments due by 7-18-05; published 5-19-05 [FR 05-10006]

San Antonio Valley, Monterey County, CA; comments due by 7-18-05; published 5-19-05 [FR 05-10008]

San Francisco Bay and Central Coast, CA; comments due by 7-18-05; published 5-19-05 [FR 05-10007]

Wahluke Slope, Grant County, WA; comments due by 7-18-05; published 5-19-05 [FR 05-10009]

## LIST OF PUBLIC LAWS

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**H.R. 483/P.L. 109–16**

To designate a United States courthouse in Brownsville, Texas, as the "Reynaldo G. Garza and Filemon B. Vela United States Courthouse". (June 29, 2005; 119 Stat. 338)

**S. 643/P.L. 109–17**

To amend the Agricultural Credit Act of 1987 to reauthorize State mediation programs. (June 29, 2005; 119 Stat. 339)

**H.R. 1812/P.L. 109–18**

Patient Navigator Outreach and Chronic Disease Prevention Act of 2005 (June 29, 2005; 119 Stat. 340)

**H.R. 3021/P.L. 109–19**

TANF Extension Act of 2005 (July 1, 2005; 119 Stat. 344)

**H.R. 3104/P.L. 109–20**

Surface Transportation Extension Act of 2005, Part II (July 1, 2005; 119 Stat. 346)

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